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S. HRG. 101-763

TELEPHONE OPERATOR CONSUMER SERVICES IMPROVEMENT ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1643

TO PROVIDE PROTECTION TO CONSUMERS IN CONNECTION WITH CERTAIN TELEPHONE SERVICES

S. 1660

RELATING TO TELEPHONE OPERATOR CONSUMER SERVICES, AND FOR OTHER PURPOSES

FEBRUARY 7, 1990

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

32-525 O WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-70

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TELEPHONE OPERATOR CONSUMER SERVICES IMPROVEMENT ACT OF 1989

WEDNESDAY, FEBRUARY 7, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, DC.

The committee met at 9:45 a.m., pursuant to notice, in room SR-253, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: John Windhausen, staff counsel and William Heyer, minority staff counsel.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. This morning we will consider legislation concerning the regulation of Alternate Operator Services Providers. The $4 billion public operator service market is the latest sector of the telecommunications industry to undergo a transition to competition. Whereas all operator services used to be provided by AT&T, there are now dozens of firms providing operator services from telephones in hotels, motels, gas stations and airports.

As with most transitions, the road has not been smooth. Congress, state regulators and the FCC have received numerous complaints about practices of these new companies. According to these complaints, consumers have been charged rates that are several times higher than the rates of AT&T. They have been charged for telephone calls that they never completed. They have been charged by one carrier, even though they used the calling card of another carrier.

As a result of these complaints many states have taken strong action to restrict the practices of the new entrants in the operator services market. Yet the state regulators agree that the consumer cannot be adequately protected unless there is complementary regulation on the Federal level. Our colleagues on the House side have considered and passed a bill to regulate many of the practices of these operator service companies.

Because of the complaints and because of the successful effort on the House side, it is clear that it is time for this committee to Act. Senator Breaux, our colleague on this subcommittee, has introduced the bill passed by the House. We also have before us a bill introduced by Senator Dixon that proposes to strengthen the enforcement provisions of Senator Breaux's bill.

In addition, we will hear today from several witnesses who believe that a completely different approach is warranted. I believe all these views deserve to be closely scrutinized by this subcommittee, and therefore I look forward to receiving testimony on the issues—on these bills, on their remedies and related concerns.

And I hope we are able to reach a consensus as soon as possible on this bill, so that it may be considered by the full Senate in the very near future. And we are most fortunate to have several important witnesses with us this morning to assist us in resolving these issues.

I have opening statements from Senators Breaux, McCain, and Gorton that I will include in the record.

(The statements and bills follow:)

OPENING STATEMENT BY SENATOR BREAUX

Mr. Chairman:

I commend you and the Committee for your quick action in organizing this investigation of the Operator Services Provider (OSP) industry. Industry practices are raising costly, confusing, and troublesome problems for consumers. It would be difficult at best at this point to categorize the consumer as a primary beneficiary of competition in the OSP industry. The more than 2000 formal consumer complaints filed with the FCC from January 1988 to February 1989—and, though now reduced by half, are still pouring in at the rate of 150 a month—attest to consumer dissatisfaction.

I recognize, Mr. Chairman, that OSP companies have established innovative services such as multilingual operator programs, voice messaging services, emergency response systems, information services for travelers, and message forwarding. Some have invested in nation-wide switching networks, and employ thousands of operators. But the outcries of average consumers are discounting the value of these new services. The average consumer does not seem impressed with multilingual operators.

I can't say that the Public Service Commission of Louisiana is impressed either. OSP company problems in Louisiana are such that the Commission is forbidding the establishment of new OSP operations in the state, pending the completion of the PSC's investigation of the industry. Mr. Chairman, I request that a letter from Mr. Don Owens, Chariman of the Louisiana Public Service Commission, be made a part of the Hearing record.

My state's PSC rightly raises the question of whether OSP operations are performing functions that are in the public interest. I am willing to withhold judgment on that question, I am willing to give these companies a fair chance to prove their acceptance in the market place.

I recall the initial consumer shock and confusion upon the introduction of MCI and Sprint long-distance services in the market place. We did not easily adjust to dialing multi-digit access codes. Even the introduction of the 1+ equal access dialing improvement was not without billing and other problems. Given this perspective I am willing to suspend judgment on the value of the new OSP entrants until they have had a reasonable opportunity to improve operations.

Mr. Chairman, I believe that S. 1660 offers the balanced approach that is appropriate for regulating this industry at this time. S. 1660 is a companion bill to H.R. 971, legislation that was carefully crafted in the House Commerce Committee after nearly a year of investigation and negotiations. H.R. 971 passed the House by unanimous consent.

This legislation offers relief for the consumer. It establishes minimum consumer notification requirements. The OSP provider must identify itself before the consumer incurs any changes. A consumer will be informed by a notice on or near the telephone of the name, address, and toll-free telephone number of the provider. The consumer is to be told that upon request additional information is available, such as rates or changes for the call, collection methods, and complaint resolution procedures. Mr. Chairman, these requirements will assure consumers in this market the same fair right of choice that they would have in making any other purchase.

The notification requirement of this bill directs the provider to see to it that any violation of the blocking prohibition opens the violator to possible FCC sanctions that could cost thousands of dollars a day.

Similarly, S. 1660 addresses the more onerous aspect of the "splashing" problem, it limits the charge to the consumer for a "splashed" call. If a caller is transferred to another carrier via a circuitous route, the consumer can only be charged for the distance of a straight line to the termination of that call.

To ensure that OSP companies' rates are reasonable, these companies must file information tariffs with the FCC, specifying rates, commission, surcharges, or other fees collected from consumers. The FCC will be required to monitor industry rates, examine service innovations and improvements, study market structure, and report its findings to the Congress.

The reports will assist us in determining whether the OSP industry is capable of servicing a worthwhile public function. Consumer response to industry practices, however, is the final arbiter of whether they are in the public interest

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Opening Statement By Senator McCain

The break-up of AT&T and the deregulation of telecommunications has led to an explosion of competition in this country. New companies, new services, and new technologies have flowed from these extraordinary events. It is clear that competition benefits the American consumer. It drives down rates and increases customer choice. When a market is effectively competitive, regulators can step aside.

Recently, operator services were open to competition and alternative operator service [AOS] providers proliferated in the handling of calls from hotels, hospitals, airports, and payphones.

But this marketplace has not worked effectively. Alternative operator service providers do not appear to be disciplined by the rigors of a competitive marketplace. Their customers pay exhorbitant rates and often don't even know they're using an AOS provider.

The crux of the problem is two-fold. Customers are not notified that they are using an AOS provider and they are often blocked from accessing the carrier of their choice. Under these circumstances, it's no wonder that there's no pressure to provide the low rates and quality service we normally associate with competition.

Rather, the real competition in this business is often for the landowner—for the hotel, the hospital, the airport, or the pay phone owner. Operators compete to offer the most attractive commission to the landowner in return for the privilege of handling calls from that location. The consumer ends up picking up the tab.

To be fair, not all AOS providers are guilty of these and other practices and the situation has improved recently. In addition, I am sensitive to the fact that there are some technical obstacles that need to be adequately addressed before competitors are equal.

But competition is supposed to benefit the telephone user. Critical to this goal is a market of informed consumers with freedom of choice. I think the bills before us set the right stage.

I look forward to the testimony this morning to help us clarify the major issues and determine whether legislation is necessary.

Opening Statement by Senator Gorton

Thank you, Mr. Chairman. I want to thank you for calling a hearing on what is undoubtedly one of the more confusing and contentious telecommunications issues of the day. Unfortunately, I like some other members of this subcommittee, have a number of other commitments this morning so I will submit detailed questions for the record and take just a moment to address my concerns in this area before I move on.

In my mind, Mr. Chairman, there are three questions at the heart of the matter before the Subcommittee this morning. First, is the consumer protected from unknown and unfair rates? Second, does the consumer have maximum access to the carrier of their choice when travelling? And third, is the Congress fostering or impeding competition by legislating in this area?

In response to the question about rates, I applaud the FCC for issuing the TRAC order as a means of addressing both the consumers awareness and the rates themselves. It has proven successful in putting the most blatant violators of the public trust either back into line or out of business. I understand that the number of complaints received at the FCC has dropped by 50% since the TRAC order was issued. Rate complaints and lack of awareness still exist however. For this reason, I support legislation which will codify these provisions and make them applicable to all Oper-

ator Service Providers, regardless of whether they are mentioned in the original FCC order.

In response to the question about maximum access, it is clear that both the technology and the market exist to support a number of companies offering long-distance and/or operator services. I will support legislation which increases the consumers' ability to choose by requiring the "unblocking" of as many aggregators as is deemed necessary and feasible by the FCC.

I must, however, take this opportunity to pose a question which I hope will be sufficiently addressed during this hearing. Representatives of this industry seem to be in agreement that if AT&T were to offer another means of access to its customers, in the way of a "1+800" number for instance, a majority of the complaints and problems which we are discussing today would be alleviated. I would ask that AT&T explain to this committee the rationale behind its decision not to provide this service for their customers while at the same time blaming the AOS companies for the access problems which exist. This complaint smacks of the proverbial pot calling the kettle black, and is bound to fall on deaf ears, at least with this Senator.

In response to the competition question, I submit that the telecommunications industry has undergone tremendous changes over the past decade as the new entrants have introduced revolutionary products, technologies and applications. The quality and availability of telecommunications services have improved over the decade due to the ability of service providers to compete in the marketplace. Operator services is one of the last strongholds of monopoly control and as competition has been introduced, so has confusion and concern for consumers, industry participants and policy makers.

But I remind the members of this Subcommittee that this transition is not unlike the transition to competition in the long-distance market, where criticism and blame resulted from an unwillingness to accept change. Yet today long distance competition has become universally accepted and criticisms have virtually disappeared. Consumers have largely accepted the change to a competitive market and have reaped its benefits. I believe that competitive operator services will follow in those footsteps and that this trend will continue as long as this subcommittee encourages innovations.

I thank the Chairman for this opportunity and will submit my questions for the record.

101ST CONGRESS
1ST SESSION

S. 1643

To provide protection to consumers in connection with certain telephone services.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, SEPTEMBER 18), 1989

Mr. DIXON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To provide protection to consumers in connection with certain telephone services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Operator Service Consumer Protection Act of 1989".

SEC. 2. FINDINGS.

The Congress hereby finds that—

(1) the divestiture of AT&T and decisions allowing open entry for competitors in the telephone marketplace produced a variety of new services and many new providers of existing telephone services;

(2) the growth of competition in the telecommunications market makes it essential to ensure that safeguards are in place to assure fairness for consumers and service providers alike;

(3) a variety of providers of operator services now compete to win contracts to provide operator services to hotels, hospitals, airports, and other aggregators of telephone business from consumers;

(4) the mere existence of a variety of service providers in the operator services marketplace is significant in making that market competitive only when consumers are able to make informed choices from among those service providers;

(5) however, often customers have no choices in selecting a provider of operator services, and often customers' attempts to reach their preferred long distance carrier by a telephone billing card, credit card, or prearranged access code number are blocked;

(6) a number of State regulatory authorities have taken action to protect consumers using intrastate operator services;

(7) from January 1988 through February 1989, the Federal Communications Commission received over 2,000 consumer complaints about operator services;

(8) these consumers have complained that they are denied access to the interexchange carrier of their choice, that they are deceived about the identity of the company servicing their calls and the rates being charged, that they lack information on what they can do to complain about unfair treatment by an operator service provider, and that they are, accordingly, being deprived of the free choice essential to the operation of a competitive market; and

(9) a combination of industry self-regulation and government regulation is required to ensure that competitive operator services are provided in a fair and reasonable manner.

SEC. 3. RULEMAKING REQUIRED.

(a) INITIATION OF PROCEEDINGS.—The Commission shall, within 30 days after the date of the enactment of this Act, initiate a proceeding pursuant to title II of the Act to establish regulations to protect consumers who use operator services to place interstate telephone calls from unfair and deceptive practices and to ensure that consumers have the opportunity to make informed choices in making such calls.

(b) TIMING AND CONTENTS OF REGULATION.—The regulation required by subsection (a) shall—

(1) be prescribed not later than 120 days after the date of enactment of this Act;

(2) contain provisions to implement each of the requirements of section 4(a);

(3) for purposes of administration and enforcement, be treated as regulations prescribed by the Commission pursuant to title II of the Act; and

(4) take effect not later than 90 days after the date of issuance of such regulations.

SEC. 4. MINIMUM REQUIREMENTS.

(a) REGULATION REQUIREMENTS.—The regulations required by section 3 shall, at a minimum—

(1) require that the provider of the operator services—

(A) identify itself, audibly and distinctly, to the consumer prior to the consumer incurring any charges; and

(B) permit the consumer to terminate the telephone call at no charge;

(2) require that the provider of operator services ensure, by contract or tariff, that each aggregator post on or near the telephone instrument, in plain view of consumers—

(A) the name, address, and toll-free telephone number of the provider; and

(B) a written disclosure that consumers have a right to obtain access to the interstate common

carriers for information on accessing that carrier's service using that telephone;

(3) require that the provider of operator services disclose immediately to the consumer, upon request—

(A) a quote of its rates or charges for the call;

(B) the methods by which such rates or charges will be collected; and

(C) the methods by which complaints concerning such rates, charges, or collection practices will be resolved;

(4) require that the provider of operator services—

(A) neither require nor participate in the blocking of any consumer's access to the interstate common carrier of the consumer's choice;

(B) assure, by contract or tariff, that its aggregators neither require nor participate in the blocking of access to such interstate common carriers, except that the Commission may grant limited, temporary waivers to particular providers of operator services for a particular access code upon a showing that such waiver is necessary to ~~pre-~~ vent fraud; and

(C) withhold payment of any commissions to aggregators at locations at which any blocking of access to any interstate common carrier occurs, and to limit charges for each interstate call at such locations to the lowest rate currently on file at the Commission among all other interstate carriers;

(5) require—

(A) that any equipment manufactured or imported more than 18 months after the date of enactment of this Act and installed by any aggregator shall be technologically capable of providing consumers with access to interstate interexchange carriers through the use of access codes approved by the Commission;

(B) that existing equipment used by aggregators be upgraded to comply with the requirements imposed pursuant to subparagraph (A) of this paragraph, except that the Commission may waive such requirements by rule or order with respect to any class or category of equipment if the Commission determines that the benefits of applying such requirements to such equipment do not justify the cost; and

(C) any other actions or measures that the Commission considers necessary to ensure that aggregators are not exposed to undue risk of fraud;

(6) establish requirements that—

(A) prohibit the provider of operator services from knowingly charging for uncompleted telephone calls;

(B) prevent, after consideration of the advice of the carrier liaison committee convened by the Commission by its order of February 27, 1989, consumers from being charged for a distance that is more than the distance, in a straight line, between the calling party's points of origination and termination of the telephone call;

(C) require that any consumer billing an interexchange telephone call on a billing card which (i) is provided by an interstate interexchange common carrier, and (ii) permits the identification of that carrier, is billed at a rate not greater than the rate of that common carrier for that call, unless the calling party requests a special service that is not available under tariff from that common carrier or consents to a different charge; and

(D) prohibit call splashing;

(7) establish minimum standards for providers of operator services to use in the routing and handling of emergency telephone calls; and

(8) establish a policy for requiring common carriers to make public information about recent changes in operator services and choices available to consumers in that market.

(b) CONSIDERATION OF COMPENSATION.—In conducting the rulemaking required by section 3, the Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to carriers other than the designated provider of operator services for such telephones.

SEC. 5. DETERMINATIONS OF RATE COMPLIANCE.

(a) FILING OF INFORMATIONAL TARIFF.—The Commission shall require each provider of operator service to file, within 30 days after the date of enactment of this Act, and to maintain and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, or other fees which are collected from consumers, with respect to calls for which operator services are provided.

(b) REVIEW OF INFORMATIONAL TARIFF.—If the rates and charges filed by any provider of operator services under subsection (a) appear upon review by the Commission to be unjust or unreasonable, the Commission shall require such provider of operator services to demonstrate that its rates and charges are just and reasonable and reflect the reasonable costs of providing service, plus a reasonable profit.

(c) PROCEEDING REQUIRED.—(1) Within 30 days after the date of enactment of this Act, the Commission shall initiate a proceeding—

(A) to monitor operator service rates;

(B) to determine the extent to which offerings made by operator service providers are improvements, in terms of service quality, price, innovation, and other factors, over those available before the entry of new operator service providers into the market;

(C) to assess, both in the aggregate and by individual providers of operator services, operator service rates, costs of service, incidences of service complaints, and service offerings; and

(D) to consider the effect that commissions and surcharges have on the overall rates charged to consumers.

(2) Not later than 9 months after the commencement of such proceeding, the Commission shall report to Congress on

findings and conclusions of such proceeding. The Commission shall, during the pendency of such proceeding, provide the Congress with quarterly interim reports on the activities and progress to date.

(3) The requirement of subsection (d) shall not apply if, on the basis of the proceeding under paragraph (1) of this subsection, the Commission makes (and includes in the report required by paragraph (2)) a factual determination that market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors.

(d) IMPLEMENTING REGULATIONS.—Unless the Commission makes the determination described in subsection (c)(3), the Commission shall, within 90 days after submission of the report required by subsection (c)(2), complete a proceeding pursuant to title II of the Act to establish regulations for implementing the requirements of such title (and subsections (a) and (b) of this section) that rates and charges for operator services be just and reasonable.

SEC. 6. DEFINITIONS.

As used in this Act:

(1) The term "Commission" means the Federal Communications Commission.

(2) The term "the Act" means the Communications Act of 1934.

(3) The term "consumer" means a person initiating any interstate telephone call using operator services.

(4) The term "operator services" means any interstate telecommunications service that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than—

(A) automatic completion with billing to the telephone from which the call originated; or

(B) completion through a carrier-specific access code number used by the consumer, with billing to an account previously established with the carrier by the consumer.

(5) The term "aggregator" means any person, that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for interstate telephone calls using a provider of operator services, and receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from that traffic aggregator's location to that operator service provider.

(6) The term "call splashing" means the transfer of a call from one operator service provider to another at a point which is different from the point at which the call originates.

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II

101ST CONGRESS
1ST SESSION

S. 1660

Relating to telephone operator consumer services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 18), 1989

Mr. BREAUX (for himself, Mr. KOHL, Mr. GORE, Mr. PRESSLER, Mr. SIMON, Mr. KERRY, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

Relating to telephone operator consumer services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Operator Consumer Services Improvement Act of 1989".

SEC. 2. FINDINGS.

The Congress hereby finds that—

(1) the divestiture of AT&T and decisions allowing open entry for competitors in the telephone market-

place produced a variety of new services and many new providers of existing telephone services;

(2) the growth of competition in the telecommunications market makes it essential to ensure that safeguards are in place to assure fairness for consumers and service providers alike;

(3) a variety of providers of operator services now compete to win contracts to provide operator services to hotels, hospitals, airports, and other aggregators of telephone business from consumers;

(4) the mere existence of a variety of service providers in the operator services marketplace is significant in making that market competitive only when consumers are able to make informed choices from among those service providers;

(5) however, often customers have no choices in selecting a provider of operator services, and often customers' attempts to reach their preferred long distance carrier by a telephone billing card, credit card, or prearranged access code number are blocked;

(6) a number of State regulatory authorities have taken action to protect consumers using intrastate operator services;

(7) from January 1988 through February 1989, the Federal Communications Commission received over 2,000 consumer complaints about operator services;

(8) these consumers have complained that they are denied access to the interexchange carrier of their choice, that they are deceived about the identity of the company servicing their calls and the rates being charged, that they lack information on what they can do to complain about unfair treatment by an operator service provider, and that they are, accordingly, being deprived of the free choice essential to the operation of a competitive market; and

(9) a combination of industry self-regulation and government regulation is required to ensure that competitive operator services are provided in a fair and reasonable manner.

SEC. 3. RULEMAKING REQUIRED.

(a) INITIATION OF PROCEEDINGS.—The Commission shall, within 30 days after the date of the enactment of this Act, initiate a proceeding pursuant to title II of the Act to establish regulations to protect consumers who use operator services to place interstate telephone calls from unfair and deceptive practices and to ensure that consumers have the opportunity to make informed choices in making such calls.

(b) TIMING AND CONTENTS OF REGULATION.—The regulation required by subsection (a) shall—

(1) be prescribed not later than 120 days after the date of enactment of this Act;

(2) contain provisions to implement each of the requirements of section 4(a);

(3) for purposes of administration and enforcement, be treated as regulations prescribed by the Commission pursuant to title II of the Act; and

(4) take effect not later than 90 days after the date of issuance of such regulations.

SEC. 4. MINIMUM REQUIREMENTS.

(a) REGULATION REQUIREMENTS.—The regulations required by section 3 shall, at a minimum—

(1) require that the provider of the operator services—

(A) identify itself, audibly and distinctly, to the consumer prior to the consumer incurring any charges; and

(B) permit the consumer to terminate the telephone call at no charge;

(2) require that the provider of operator services ensure, by contract or tariff, that each aggregator post on or near the telephone instrument, in plain view of consumers—

(A) the name, address, and toll-free telephone number of the provider; and

(B) a written disclosure that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone;

(3) require that the provider of operator services disclose immediately to the consumer, upon request—

(A) a quote of its rates or charges for the call;

(B) the methods by which such rates or charges will be collected; and

(C) the methods by which complaints concerning such rates, charges, or collection practices will be resolved;

(4) require that the provider of operator services—

(A) neither require nor participate in the blocking of any consumer's access to the interstate common carrier of the consumer's choice; and

(B) assure, by contract or tariff, that its aggregators neither require nor participate in the

blocking of access to such interstate common carriers, except that the Commission may grant limited, temporary waivers to particular providers of operator services for a particular access code upon a showing that such waiver is necessary to prevent fraud;

(5) require—

(A) that any equipment manufactured or imported more than 18 months after the date of enactment of this Act and installed by any aggregator shall be technologically capable of providing consumers with access to interstate interexchange carriers through the use of access codes approved by the Commission;

(B) that existing equipment used by aggregators be upgraded to comply with the requirements imposed pursuant to subparagraph (A) of this paragraph, except that the Commission may waive such requirements by rule or order with respect to any class or category of equipment if the Commission determines that the benefits of applying such requirements to such equipment do not justify the cost; and

(C) any other actions or measures that the Commission considers necessary to ensure that

aggregators are not exposed to undue risk of fraud;

(6) establish requirements that—

(A) prohibit the provider of operator services from knowingly charging for uncompleted telephone calls;

(B) prevent, after consideration of the advice of the carrier liaison committee convened by the Commission by its order of February 27, 1989, consumers from being charged for a distance that is more than the distance, in a straight line, between the calling party's points of origination and termination of the telephone call; and

(C) require that any consumer billing an interexchange telephone call on a billing card which (i) is provided by an interstate interexchange common carrier, and (ii) permits the identification of that carrier, is billed at a rate not greater than the rate of that common carrier for that call, unless the calling party requests a special service that is not available under tariff from that common carrier or consents to a different charge;

(7) establish minimum standards for providers of operator services to use in the routing and handling of emergency telephone calls; and

(8) establish a policy for requiring common carriers to make public information about recent changes in operator services and choices available to consumers in that market.

(b) CONSIDERATION OF COMPENSATION.—In conducting the rulemaking required by section 3, the Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to carriers other than the designated provider of operator services for such telephones.

SEC. 5. DETERMINATIONS OF RATE COMPLIANCE.

(a) FILING OF INFORMATIONAL TARIFF.—The Commission shall require each provider of operator service to file, within 30 days after the date of enactment of this Act, and to maintain and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, or other fees which are collected from consumers, with respect to calls for which operator services are provided.

(b) REVIEW OF INFORMATIONAL TARIFFS.—If the rates and charges filed by any provider of operator services under subsection (a) appear upon review by the Commission to be unjust or unreasonable, the Commission shall require such provider of operator services to demonstrate that its

rates and charges are just and reasonable and reflect the reasonable costs of providing service, plus a reasonable profit.

(c) PROCEEDING REQUIRED.—(1) Within 30 days after the date of enactment of this Act, the Commission shall initiate a proceeding—

(A) to monitor operator service rates;

(B) to determine the extent to which offerings made by operator service providers are improvements, in terms of service quality, price, innovation, and other factors, over those available before the entry of new operator service providers into the market;

(C) to assess, both in the aggregate and by individual providers of operator services, operator service rates, costs of service, incidences of service complaints, and service offerings; and

(D) to consider the effect that commissions and surcharges have on the overall rates charged to consumers.

(2) Not later than 9 months after the commencement of such proceeding, the Commission shall report to Congress on findings and conclusions of such proceeding. The Commission shall, during the pendency of such proceeding, provide the Congress with quarterly interim reports on the activities and progress to date.

(3) The requirement of subsection (d) shall not apply if, on the basis of the proceeding under paragraph (1) of this subsection, the Commission makes (and includes in the report required by paragraph (2)) a factual determination that market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors.

(d) IMPLEMENTING REGULATIONS.—Unless the Commission makes the determination described in subsection (c)(3), the Commission shall, within 90 days after submission of the report required by subsection (c)(2), complete a proceeding pursuant to title II of the Act to establish regulations for implementing the requirements of such title (and subsections (a) and (b) of this section) that rates and charges for operator services be just and reasonable.

SEC. 6. DEFINITIONS.

As used in this Act, the term—

(1) "Commission" means the Federal Communications Commission;

(2) "the Act" means the Communications Act of 1934;

(3) "consumer" means a person initiating any interstate telephone call using operator services;

(4) "operator services" means any interstate telecommunications service that includes, as a component,

any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than—

(A) automatic completion with billing to the telephone from which the call originated; or

(B) completion through a carrier-specific access code number used by the consumer, with billing to an account previously established with the carrier by the consumer; and

(5) "aggregator" means any person, that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for interstate telephone calls using a provider of operator services.

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Senator INOUYE. I would like to first call upon my distinguished colleague from Illinois, Senator Dixon, who will begin by testifying on behalf of his bill.

STATEMENT OF HON. ALAN J. DIXON, U.S. SENATOR FROM ILLINOIS

Senator DIXON. Thank you, Mr. Chairman.

May I first say my remarks will be very brief. I have Mr. Bill Kolloff of my staff with me in the event that there are any technical inquiries by either you or your staff. But I hasten to suggest that I have no particular pride of authorship in S. 1643, Mr. Chairman. And should it be the decision of the Chair and the members of his subcommittee that a good deal of what I suggest in my bill is the appropriate response to the problem in this country, I would be greatly honored if the Chairman of the subcommittee and his subcommittee staff would fashion their own bill containing the elements of my bill and make it the subcommittee and the committee's bill. I hasten to add that I would support that and would be anxious to address a problem which I consider to be a significantly serious problem in the country.

I would like to thank you for the opportunity to express my concern over practices in the operator-assisted telephone service indus-

try, which I believe we have addressed pretty well in Senate Bill S. 1643, the Telephone Operator Service Consumer Protection Act of 1989.

The American telephone industry underwent deregulation with the intent of improving both service and value through normal market forces in a competitive environment. On the positive side, Mr. Chairman, deregulation has provided several improvements in the industry, such as the availability of less expensive and more sophisticated telephones, expanded operator services and the ability of each consumer to select the long distance carrier of his or her choice.

However, I believe in this area, that of alternate operator services, some providers operate in a manner that results in an unsuspecting and all too often captive consumer paying higher costs than those of prederegulation times.

Mr. Chairman, over 4,000 complaints—4,000—concerning the actions of alternate operator service providers have been received by the FCC. No less than 150 ongoing complaints are filed monthly. The vast majority of these complaints concern high long distance charges and consumers not being able to reach the long distance carrier of their individual choice.

In addition, the local telephone companies who handle the billing for both the alternate service operator providers and the major long distance carriers are besieged by angry consumers who question unreasonably high long distance bills.

Our constituents have legitimate complaints in my view. The alternative operator service companies provide long distance service from call aggregators, such as hotels, airports, hospitals, universities, rest stops and other public pay phone locations. And when a long distance phone call is placed from these phones, often unknown to the consumer, the call is handled by the alternate operator service provider assigned to that phone, which most likely is not the long distance carrier of the consumer's choice.

When the consumer receives the monthly phone bill later, all too often, and all too late, he or she discovers that the cost of the call is greatly in excess of the rates charged by his or her long distance carrier. Even consumers who actually attempt to dial special codes to reach their own long distance carrier are denied access, Mr. Chairman, by aggregators through a process referred to as blocking.

Billing practices also are such that consumers may receive a long distance phone bill from a city they were never in, resulting in two charges for one call and often charges well in excess of competing carrier rates.

If I may, I'd like to depart from the subject matter here for a moment. We are busy people in this committee. Maybe we do not realize how ordinary folks look at this thing when they get their bill. They look in there and they see this bill, and they see a charge from a town, Wichita, Kansas, where they have never been in their life.

Now, you know that is going to result in a complaint to the operator service company. I personally have experienced these frustrations myself, Mr. Chairman. And I am sure that you and your constituents have had similar experiences.

The alternate operator service companies represented here today will tell us that these problems are nothing more than growing pains of a new industry. I am sure some of that is true. However, it has been proven over the past 12 months that self-compliance and toothless regulations will not protect our constituents. Instead we must pass tough legislation backed up by strict enforcement and appropriate penalties to motivate violators to correct these problems.

Allowing this industry to carry on business as usual while a nine-month study is conducted to determine if additional regulation is required will only delay the implementation of inevitable controls at the expense of our constituents. The time to address these abuses is now, before additional financial harm is perpetrated upon the American consumer.

Mr. Chairman, I ask your consent and the consent of the committee to include my full statement on the record. I have it here. I thank you for allowing me to present my views here today, and I look forward to the testimony from other witnesses.

Let me just make this quick observation, Mr. Chairman, before I leave, and perhaps my colleagues either from South Dakota or Montana or yourself may have questions.

When I go home and do town hall meetings, which we all do, while we think that taxes are the only things on the minds of our constituents back home, I get so many questions about this kind of a situation. Our folks are living in a different time, a transitional time as we all know, with respect to telephone service.

Frankly, there are a great many things out there they do not like since the changes. We all know that. But what really, I think, upsets them tremendously is the fact these additional charges on calls that they do not know about. The fact that they sometimes get blocked from using a service they selected and a variety of other things such as having bills from communities in which they know they have never been in their life, that really upset them a good deal.

And it gives them the feeling that the system is once again working against them. And I think we ought to do all we can. I do not have any problem with the direction in which my friend, the distinguished senator from Louisiana, Senator Breaux, is moving with his bill. You are accurate in saying that is a reflection of the House bill. It is also kind of a reflection of what the FCC has already adopted, which I say with some regret is not working in the marketplace, Mr. Chairman.

But I would suggest to you more ought to be done. And I again want to conclude by saying, I do not have any pride of authorship in this. I am responding to hundreds of objections from constituents and citizens in my state. And I have infinite respect for the Chair whose seniority and personal talents around here are well known.

And if the Chair and this subcommittee and others would see fit to craft their own bill, looking at what Senator Breaux has done or what Senator Dixon has done, and what other witnesses might suggest, I would be delighted, Mr. Chairman, to become a co-sponsor of that bill and support it with all the enthusiasm at my command, because I think the Senate would, frankly, more greatly respect the

work product of this committee and the subcommittee chaired by the eminently successful chairman whose reputation here is well known and highly regarded.

So, I simply want to close on that note. I think it is a problem that needs to be solved. It ought to be solved this year. And it ought to be solved by, you know, kind of this committee doing the job it always does so well in bringing forth a product we can all support. And I would enthusiastically support that and support that bill instead.

[The statement follows:]

STATEMENT OF HON. ALAN J. DIXON, U.S. SENATOR FROM ILLINOIS

Mr. Chairman, I would like to thank you for the opportunity to express my concern over practices in the operator assisted telephone service industry which I have addressed in Senate bill S. 1643, the Telephone Operator Service Consumer Protection Act of 1989.

The American telephone industry underwent deregulation with the intent of improving both service and value through normal market forces in a competitive environment. On the positive side, deregulation has provided several improvements in the industry such as the availability of less expensive and more sophisticated telephones, expanded operator services, and the ability of each consumer to select the long distance carrier of his or her choice. However, in one area, that of alternate operator services [AOS], some providers operate in a manner that results in an unsuspecting, and all too often, captive consumer paying higher costs than those of pre-deregulation times.

Over 4,000 complaints concerning the actions of alternate operator service providers have been received by the Federal Communications Commission [FCC]. No less than 150 ongoing complaints are filed monthly. The vast majority of these complaints concern high long distance charges and consumers not being able to reach the long distance carrier of choice. In addition, the local telephone companies, who handle the billing for both the alternate operator service providers and the major long distance carriers, are beseiged by angry consumers who question unreasonably high long distance bills.

Our constituents have legitimate complaints. The alternative operator service companies provide long distance service from call "aggregators," such as hotels, airports, hospitals, universities, rest stops, and other public payphone locations. When a long distance call is placed from these phones, often unknown to the consumer, the call is handled by the alternate operator service provider assigned to that phone—which most likely is not the long distance carrier of the consumer's choice. When the consumer receives the monthly phone bill, all too often and too late he or she discovers that the cost of the call is greatly in excess of the rates charged by his or her long distance carrier. Even consumers who attempt to dial special codes to reach their own long distance carrier are denied access by some aggregators through a process referred to as "blocking."

Billing practices also are such that consumers may receive a long distance phone bill from a city they were never in, and often charges well in excess of competing carriers' rates. I personally have experienced these frustrations, and I am sure that you and your constituents share similar experiences.

In response to a complaint filed jointly by the Telecommunications Research and Action Center [TRAC] and Consumer Action [CA], the FCC ordered, 1 year ago, that a sign be placed on or near each phone serviced by the five alternate operator service providers that received the most complaints. Additionally, the FCC required that each provider identify itself at the beginning of each call. Such actions would allow the consumer, if so desired, time to terminate the call without incurring any charges. The consumer would then be free to place the call with the long distance carrier of his or her choice. In addition, the FCC ordered that blocking by aggregators serviced by these alternate service operators be stopped.

Mr. Chairman, I submit to you that this is not being done, and our constituents continue to fall prey to these unscrupulous practices. One does not have to look hard or far to find violations of the FCC order. In a short time, my staff uncovered violations of the FCC signage, branding, and blocking orders in four Washington area hotels and one restaurant that use alternate operator service providers. Lack

of information posted on or near the phone makes it difficult for the consumer to make an informed decision prior to initiating a call. In fact, my staff has not been able to find one example at any phone location where the signage requirements of the FCC have been met. Is it any wonder that our constituents are confused over the practices of the alternate operator service industry? Even upon examination of my own long distance bill for November, I was surprised to discover that I used five operator service providers in addition to the carrier of my choice. Using a three-call sample, the total cost charged by the operator service providers was $16.00, while comparable costs using the long distance carrier of choice was $7.00. This difference represents a 228 percent increase in costs.

Mr. Chairman, considering a $9.00 differential for only three phone calls, let's imagine the magnitude of the issue before us today. Multiply my experience by the entire government usage, add in private industry, and our constituents calls and we rapidly uncover abuses that reach to the hundreds of millions of dollars level.

Mr. Chairman, the legislation that I have proposed creates a disincentive for the owners of the telephones to continue their blocking policies. The aggregators who continue the practice of blocking will not be allowed to receive commissions from their preselected provider. In addition, the alternate operator service providers who knowingly service these aggregators will not be allowed to charge a "captive" consumer a rate in excess of the lowest tariff available from any other long distance providers for the same call.

Therefore, if an aggregator and its preferred carrier want to charge the public higher rates, they must provide ready access to all other carriers. If the rates offered by the aggregator are too high, consumers will switch to the more reasonably priced carrier. Over time, this open market environment will lower rates to a reasonable level, as true competition should.

The second practice that must be eliminated is call splashing. Call splashing occurs when an operator service provider does not have the capacity to complete a call. The call is transferred at some point to another long distance provider. The customer then receives two bills for the one call—one from the carrier the call was placed with, and a second from the carrier who completed the call. This results in the consumer receiving a bill from a location he or she doesn't recall making a call from, or possibly not ever being in. My legislation prohibits both these practices and the unnecessary confusion and inconvenience they place on our constituents.

Mr. Chairman, the alternate operator service companies represented here today will tell us that that these problems are nothing more than growing pains of a new industry. They will assure us that they have the situation well in hand and are in the act of self-policing their fellow companies through their newly formed industry trade association, the Operator Service Providers of America [OSPA]. However, only about 25 percent of the approximately 100 alternate service operator companies are members of OSPA, and complaints continue to roll in to the FCC against both members and nonmembers alike. It has been proven over the past 12 months that self-compliance and toothless regulations will not protect our constituents. Instead, we must pass tough legislation backed up by strict enforcement and appropriate penalties to motivate violators to correct these problems.

Allowing this industry to carry on business as usual while a 9-month study is conducted to determine if additional regulation is required will only delay the implementation of inevitable controls at the expense of our constituents. The time to address these abuses is now, before additional financial harm is perpetrated upon the American consumer.

Mr. Chairman, thank you for allowing me to present my views here today. I look forward to the testimony that will be presented by our expert witnesses. Thank you.

Senator INOUYE. I thank you very much, Senator Dixon, especially for your kind words.

Like many other activities we find ourselves involved in, it is the personal involvement that makes the difference. The problem that you described fell upon me about a month ago. So, I know what you are talking about. And when that falls upon the chairman of this committee, you are bound to get some action.

Senator DIXON. Well, I am delighted to hear that.

Senator INOUYE. And I am also pleased to announce that last month I finally got cable in my house. So, I am an expert on cable television. So, we are going to do something about it.

Senator DIXON. God bless you, Mr. Chairman. I am delighted to say we just got cable too at my house. But we do not have WGN yet. If you can use your influence to get that great Chicago station on my cable here, I will be appreciative.

Senator BURNS. You want to watch the Cubs, do you?

Senator DIXON. Yes, Mr. Burns, I do. I thank the Chair. If there are no questions, I better go to my 10:00 obligation. I thank the Chair.

Senator INOUYE. Do you have a statement?

OPENING STATEMENT BY SENATOR PRESSLER

Mr. Chairman, thank you for calling this hearing on alternative operator services. This is an issue which has been of great consumer interest. I must say that the FCC action initiated last year has apparently had some success, as complaints to my office have decreased markedly since then. Nevertheless, I think we have some good legislation before us that can help strengthen the FCC's position.

I am an original cosponsor of Senator Breaux's bill, S. 1660. This legislation has been worked out to the satisfaction of most of the parties involved, thus representing a consensus on the appropriate approach. But there are still some differences of opinion on some issues, and I look forward to hearing from those witnesses.

I am particularly interested in hearing from some of those entities other than the alternative operator service providers who are affected by this legislation, such as hotel chains and pay phone providers.

Mr. Chairman, thank you again for scheduling this hearing. I look forward to reporting legislation to the floor.

Senator INOUYE. And now I am pleased to call upon the Chief of the Common Carrier Bureau of the Federal Communications Commission, Mr. Richard Firestone.

I welcome you, sir, Mr. Firestone, and you may proceed as you wish.

STATEMENT OF RICHARD M. FIRESTONE, CHIEF, COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY MARY BETH HESS, CHIEF, ENFORCEMENT DIVISION

Mr. FIRESTONE. Thank you, Mr. Chairman, members of the subcommittee.

I am pleased to have the opportunity to appear before you to address our mutual concerns about the operator services that consumers receive today. And with me at the table is Mary Beth Hess, Chief of the Enforcement Division of the Common Carrier Bureau.

While there are several points which I will stress in my testimony, let me say at the outset that our review has led us to conclude that while some progress has been made in the past year, significant AOS-related problems continue to bedevil the American public. And so we at the Commission are committed to achieve the same goals that are expressed in the pending legislation, that is, ensuring that competitive operator services are provided to consumers in a fair and reasonable manner.

AOS companies promote their services as innovative, competitive alternatives to traditional operator services. Consumers complain, however, that AOS companies fail to provide adequate notice that they will be handling the call, that they charge rates that may be significantly higher than other carriers' rates and that they engage in call blocking, the practice of preventing a caller from reaching a carrier other than that selected by the hotel, airport, hospital or other call aggregator.

In February of 1989 the Bureau determined that a number of AOS practices were unlawful under the Communications Act and ordered corrective actions. The steps taken a year ago in the Bureau's order were designed to ensure that consumers would have the ability to access their carrier of choice and the information needed to decide for themselves what services they are willing to purchase, from whom and at what rates.

I am pleased to report that the volume of consumer complaints has diminished substantially since the Bureau's order, to about half the prior level. Nonetheless, AOS continues to comprise the single biggest category of consumer complaints before the Bureau, currently in the range of 125 to 150 a month. Both the number and nature of the complaints that we receive today tell us that significant problems persist.

Interexchange carriers and AOS providers currently pay commissions, rent or other compensation to call aggregators, such as the hotels, airports and hospitals that you have heard about. They have a relatively captive clientele, and their commissions are based on the operator-assisted calls placed over the aggregator's telephone.

This has prompted claims that operator service providers today are operating largely to the benefit of their partner, the call aggregator, and at the expense of the end-user—the consumer.

To address these continuing concerns the Bureau has undertaken several steps. First, the staff is drafting for Commission consideration a proposed rulemaking proceeding. The objectives of this rulemaking proceeding will be, one, to adopt rules applicable to all operator service providers as well as to the call aggregators with whom they contract for service. Second, to stop the practice of call blocking. And third, to work cooperatively with the state officials who have themselves begun to take action in this area.

The second step that we are undertaking will be to continue to investigate consumer complaints and inquiries and obtain refunds or other relief when we can. Third, we will continue to inform the public about AOS rates and practices and the choices that consumers have.

Fourth, the staff has been instructed to issue a consumer bulletin explaining how a consumer can access his or her carrier of choice and identifying carriers' access codes. Fifth, Chairman Sikes is sending a letter to State Attorneys General asking them to look into practices which might violate their state's laws as well.

The Subcommittee has also asked that I comment on the various legislative proposals pending in the Congress. Let me re-emphasize that I share the concerns addressed in the several bills. They would require the Commission to adopt in its regulations many of the pro-

visions that the Bureau has already determined in the TRAC order are necessary to regulate industry conduct here.

My most important concern with the legislation, however, is that the bills appear to require the Commission to subject AOS providers to traditional rate of return regulation. This would pose a major resource problem for the Commission. But my concern is far greater than this.

Rate of return regulation is often described as "cost plus" regulation. Some of these companies, these AOS providers, may well have higher costs than the underlying interexchange carrier, including the large commissions they pay to call aggregators. A rate of return regulation approach, thus, might not bring about a decrease in rates charged to consumers and may have the perverse effect of having a government imprimatur placed on the rates being charged.

So, instead, the Bureau favors regulations, many of which are set forth in the legislative proposals, to enable consumers to reach their carrier of choice and thereby pay the rates established by that carrier.

The Commission is committed to advancing consumer interests and ensuring the availability of communications service options at reasonable rates. Despite past Commission action, serious problems continue to plague the operator services marketplace today. We agree with the sponsors of pending legislation, therefore, that an FCC rulemaking proceeding is required to fashion an appropriate regulatory framework.

We will, of course, keep Congress fully informed of our progress and stand ready to work together to ensure that consumers are treated fairly.

Thank you for the opportunity to appear before you today, and I will be happy to respond to any questions that you have.

[The statement and questions and answers follow:]

STATEMENT OF

RICHARD M. FIRESTONE
CHIEF, COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I AM PLEASED TO HAVE THE OPPORTUNITY TO APPEAR BEFORE YOU TO ADDRESS OUR MUTUAL CONCERNS ABOUT THE OPERATOR SERVICES CONSUMERS RECEIVE TODAY.

AS YOU KNOW, THE RAPID EMERGENCE OF A VARIETY OF PROVIDERS OF OPERATOR SERVICES HAS GENERATED CONSIDERABLE CONTROVERSY. OVER THE LAST TWO YEARS, ATTENTION HAS BEEN FOCUSED ON A RELATIVELY NEW CATEGORY OF ENTREPRENEURS IN THE INDUSTRY COMMONLY REFERRED TO AS ALTERNATIVE OPERATOR SERVICE (OR AOS) PROVIDERS. CONGRESS, STATES, AND THE FCC HAVE ALL EXPRESSED CONCERNS ABOUT THE RATES AND PRACTICES OF SOME AOS COMPANIES. LEGISLATIVELY, THIS CONCERN HAS BEEN EXPRESSED IN OVERSIGHT HEARINGS AND IN VARIOUS BILLS. AND A YEAR AGO, THE FCC FOUND CERTAIN PRACTICES BY AOS PROVIDERS TO BE UNLAWFUL AND MANDATED CORRECTIVE ACTIONS.

WHILE THERE ARE SEVERAL POINTS WHICH I WILL STRESS IN MY TESTIMONY, LET ME SAY AT THE OUTSET THAT OUR REVIEW HAS LED US TO CONCLUDE THAT WHILE SOME PROGRESS HAS BEEN MADE IN THE PAST YEAR, SIGNIFICANT AOS-RELATED PROBLEMS CONTINUE TO BEDEVIL THE AMERICAN PUBLIC. AND SO WE AT THE COMMISSION ARE COMMITTED TO ACHIEVE THE SAME GOALS THAT ARE EXPRESSED IN THE SEVERAL BILLS CURRENTLY PENDING IN THE HOUSE AND SENATE, THAT IS, ENSURING THAT COMPETITIVE OPERATOR SERVICES ARE PROVIDED TO CONSUMERS IN A FAIR AND REASONABLE MANNER.

THE ALTERNATIVE OPERATOR SERVICE INDUSTRY DEVELOPED OVER THE PAST FEW YEARS AMID FUNDAMENTAL CHANGES IN THE OPERATION AND REGULATION OF THE TELECOMMUNICATIONS INDUSTRY, AS ENTREPRENEURIAL VENTURES CREATED ALTERNATIVES TO TRADITIONAL OPERATOR ASSISTED SERVICES. AOS COMPANIES TYPICALLY LEASE LONG DISTANCE LINES FROM INTEREXCHANGE CARRIERS AND COMBINE THAT TRANSPORT ELEMENT WITH THEIR OWN OPERATOR SERVICES. THEY THEN ENTER INTO CONTRACTS WITH CLIENT COMPANIES, KNOWN AS "CALL AGGREGATORS", SUCH AS HOTELS, AIRPORTS, HOSPITALS AND OTHER BUSINESSES AND ORGANIZATIONS THAT HAVE PUBLIC TELEPHONES AVAILABLE TO TRANSIENT USERS. BARRING SOME AFFIRMATIVE ACTION BY THE CALLER, SUCH AS DIALING ANOTHER COMPANY'S ACCESS NUMBER, THE CALL AGGREGATORS' CUSTOMERS ARE AUTOMATICALLY CONNECTED TO THE AOS PROVIDER WHEN THEY PLACE A LONG DISTANCE CALL BY FIRST DIALING "0". IN THE CASE OF THESE CONTRACTS BETWEEN AN OPERATOR SERVICE PROVIDER AND A CALL AGGREGATOR, THE TELEPHONES ON THE CALL AGGREGATORS' PREMISES ARE SAID TO BE "PRESUBSCRIBED" TO THE PARTICULAR OPERATOR SERVICE PROVIDER. AT&T AND OTHER INTEREXCHANGE CARRIERS ALSO ENTER INTO CONTRACTS WITH CALL AGGREGATORS TO HAVE CALLS AUTOMATICALLY CONNECTED TO THEIR NETWORKS.

ALTERNATIVE OPERATOR SERVICES ARE GENERALLY ASSOCIATED WITH "0+" CALLS, E.G., COLLECT, THIRD-PARTY BILLED, AND CREDIT CARD CALLS (INCLUDING CALLS MADE WITH TELEPHONE COMPANY CALLING CARDS AND MAJOR CREDIT CARDS). AOS PROVIDERS ALSO MAY OFFER

ADDITIONAL, NON-TRADITIONAL SERVICES SUCH AS MULTILINGUAL OPERATORS, VOICE MESSAGING AND VOICE MAIL. FOR THE SERVICES THEY PROVIDE, EACH COMPANY CHARGES ITS OWN RATES WHICH, DEPENDING ON A SERIES OF VARIABLES, MAY BE LOWER, THE SAME OR HIGHER THAN AT&T'S RATES. LOCAL EXCHANGE CARRIERS GENERALLY BILL CUSTOMERS AND COLLECT PAYMENTS FOR AOS COMPANIES IN ACCORDANCE WITH CONTRACTS BETWEEN THE AOS PROVIDER AND THE LOCAL TELEPHONE COMPANY OR, IN SOME INSTANCES, UNDER RATE SCHEDULES AS MANDATED BY SOME STATE REGULATORY COMMISSIONS. CALLS BILLED TO A TELEPHONE COMPANY CALLING CARD WILL OFTEN APPEAR ON THE USER'S MONTHLY TELEPHONE BILL. CALLS BILLED TO A BANK OR CONSUMER CREDIT CARD (E.G., MASTERCARD, VISA, ETC.) WILL APPEAR ON THAT CREDIT CARD BILL RATHER THAN ON A MONTHLY TELEPHONE BILL.

FROM THE BEGINNING, AOS COMPANIES HAVE PROMOTED THEIR SERVICES AS INNOVATIVE, COMPETITIVE ALTERNATIVES TO TRADITIONAL OPERATOR SERVICES, TAILORED TO MEET THE SPECIALIZED NEEDS OF THE TRANSIENT CALLER. IN ADDITION, SOME SERVICE PROVIDERS MAINTAIN THAT THEIR SERVICES HAVE ENABLED HOTELS, HOSPITALS AND OTHER INSTITUTIONS TO BECOME MORE EFFECTIVE IN THE PROVISION OF OPERATOR SERVICES TO THE PUBLIC. AS THE INDUSTRY HAS GROWN, HOWEVER, CONSUMERS HAVE COMPLAINED THAT THE AOS COMPANIES FAIL TO PROVIDE ADEQUATE NOTICE THAT AN AOS WILL BE HANDLING THE CALL, THAT THEY CHARGE RATES THAT MAY BE SIGNIFICANTLY HIGHER THAN OTHER INTEREXCHANGE CARRIERS' RATES, AND THAT THEY ENGAGE IN

CALL BLOCKING -- THE PRACTICE OF PREVENTING A CALLER FROM REACHING A CARRIER OTHER THAN THAT SELECTED BY THE CALL AGGREGATOR.

IN MARCH 1988, IN RESPONSE TO NUMEROUS CONSUMER COMPLAINTS AND A LETTER FROM HOUSE ENERGY AND COMMERCE COMMITTEE CHAIRMAN JOHN DINGELL REQUESTING A REPORT ON THE COMMISSION'S POSITION REGARDING AOS COMPANIES, THE COMMON CARRIER BUREAU (BUREAU) INITIATED AN INVESTIGATION TO DETERMINE WHETHER AOS COMPANIES WERE OPERATING IN COMPLIANCE WITH THE COMMUNICATIONS ACT. IN ADDITION, THE BUREAU ISSUED A CONSUMER BULLETIN IN AN EFFORT TO INFORM THE PUBLIC ABOUT AOS COMPANIES. THIS BULLETIN RECEIVED WIDE PUBLIC DISSEMINATION.

IN JULY 1988, TELECOMMUNICATIONS RESEARCH AND ACTION CENTER AND CONSUMER ACTION JOINTLY FILED A FORMAL COMPLAINT AGAINST FIVE AOS COMPANIES ALLEGING UNJUST AND UNREASONABLE RATES AND PRACTICES. BECAUSE THE ISSUES RAISED IN THE COMPLAINT WERE IDENTICAL TO THOSE UNDER CONSIDERATION IN THE ONGOING BUREAU INVESTIGATION, THE TWO PROCEEDINGS WERE CONSOLIDATED FOR DISPOSITION.

IN FEBRUARY 1989, THE COMMON CARRIER BUREAU, PURSUANT TO DELEGATED AUTHORITY, ADOPTED AN ORDER RESOLVING THE FORMAL COMPLAINT. SPECIFICALLY, IN ORDER TO PROTECT CONSUMERS, THE BUREAU DETERMINED THAT A NUMBER OF AOS PRACTICES WERE UNLAWFUL

UNDER THE COMMUNICATIONS ACT. TO REMEDY THE UNLAWFUL PRACTICES, THE BUREAU ORDERED THE DEFENDANTS TO COMPLY WITH A NUMBER OF SPECIFIC REQUIREMENTS.

FIRST, THE BUREAU ORDERED THE FIVE DEFENDANT AOS COMPANIES TO PROVIDE WRITTEN CONSUMER INFORMATION TO THEIR CUSTOMERS THAT CAN BE PLACED ON, OR IN CLOSE PROXIMITY TO, ALL PRESUBSCRIBED TELEPHONES. THESE MATERIALS ARE REQUIRED TO SET FORTH THE COMPANY'S IDENTITY (NAME, ADDRESS AND A CUSTOMER SERVICE NUMBER FOR RECEIPT OF FURTHER INFORMATION) AS WELL AS INFORMATION ADVISING USERS THAT THE COMPANY'S RATES WILL BE QUOTED ON CUSTOMER REQUEST. CONTRACTS WITH CALL AGGREGATORS MUST CONTAIN PROVISIONS REQUIRING AGGREGATORS TO DISPLAY THESE MATERIALS ON, OR IN PROXIMITY TO, ALL PRESUBSCRIBED TELEPHONES. IN ADDITION, THE DEFENDANTS WERE ORDERED TO AMEND EXISTING CONTRACTS WITH CALL AGGREGATORS TO REFLECT THIS REQUIREMENT.

SECOND, THE BUREAU FOUND IT TO BE AN UNLAWFUL PRACTICE FOR AN OPERATOR SERVICE PROVIDER NOT TO ORALLY IDENTIFY ITSELF BEFORE A CALL IS CONNECTED, INCLUDING A SUFFICIENT DELAY PERIOD TO PERMIT A CALLER TO HANG UP AND/OR ADVISE THE OPERATOR TO TRANSFER THE CALL TO THE CUSTOMER'S PREFERRED CARRIER. TO THE EXTENT THAT THE DEFENDANTS DID NOT ALREADY DO SO, THE BUREAU ORDERED THIS PROCEDURE TO BE IMPLEMENTED BY THE DEFENDANTS AS OF THE EFFECTIVE DATE OF THE ORDER (MARCH 29, 1989).

THIRD, THE BUREAU DETERMINED THAT CALL BLOCKING -- DEFINED IN THE ORDER AS THE PROCESS OF SCREENING CALLS FOR CERTAIN PREDETERMINED NUMBERS AND PREVENTING THE COMPLETION OF CALLS TO A CARRIER DIFFERENT FROM THE PRESUBSCRIBED AOS PROVIDER -- IS UNLAWFUL AND ORDERED THE DEFENDANTS TO DISCONTINUE THE PRACTICE IMMEDIATELY. THE BUREAU ALSO REQUIRED THE DEFENDANTS TO AMEND THEIR CONTRACTS WITH CALL AGGREGATORS TO PROHIBIT CALL BLOCKING BY THE AGGREGATOR.

FINALLY, THE BUREAU DETERMINED THAT TECHNICAL SOLUTIONS NEEDED TO BE EXPLORED IN RESOLVING THE PROBLEM OF CALL SPLASHING -- THE PRACTICE WHEREBY THE SERVICE PROVIDER TRANSFERS A CALL TO ANOTHER CARRIER, BUT DOES SO AT A LOCATION DIFFERENT FROM THAT AT WHICH THE CALLER IS LOCATED AND THE CALLER'S BILL REFLECTS HANDLING FROM THAT DISTANT POINT. SINCE COMPANIES THAT WERE NOT DEFENDANTS IN THE COMPLAINT PROCEEDING WERE REQUIRED TO PARTICIPATE IN DEVELOPING A COMPREHENSIVE RESOLUTION, THE BUREAU ORDERED THE DEFENDANT AOS COMPANIES TO BRING THE CALL SPLASHING PROBLEM BEFORE THE CARRIER LIAISON COMMITTEE OF THE EXCHANGE CARRIER STANDARDS ASSOCIATION. THE DEFENDANTS WERE REQUIRED, HOWEVER, TO ELIMINATE IMMEDIATELY CALL SPLASHING TO THE EXTENT TECHNICALLY FEASIBLE.

WHILE THE BUREAU ORDER WAS SPECIFICALLY ISSUED AGAINST THE FIVE DEFENDANTS, THE ORDER FOUND THE IDENTIFIED PRACTICES TO BE

UNLAWFUL. THEREFORE, ANY COMPANY ENGAGING IN SUCH PRACTICES, INCLUDING OTHER AOS COMPANIES AND TRADITIONAL LONG DISTANCE PROVIDERS, WOULD BE VIOLATING THE COMMUNICATIONS ACT.

THE STEPS TAKEN A YEAR AGO IN THE BUREAU'S ORDER WERE DESIGNED TO ENSURE THAT CONSUMERS WOULD HAVE THE ABILITY TO ACCESS THEIR CARRIER OF CHOICE AND THE INFORMATION NEEDED TO DECIDE FOR THEMSELVES WHAT SERVICES THEY ARE WILLING TO PURCHASE, FROM WHOM AND AT WHAT RATES. THE BUREAU ALSO FOUND THAT THE RECORD EVIDENCE SUBMITTED IN THAT PROCEEDING WAS INSUFFICIENT TO SUPPORT A FINDING THAT AOS RATES WERE UNLAWFUL UNDER THE COMMUNICATIONS ACT. THE BUREAU WAS CAREFUL TO EMPHASIZE, HOWEVER, THAT IT WOULD REVISIT RATE ISSUES AND THE TRAC ORDER REQUIREMENTS IF ADDITIONAL REMEDIAL ACTION PROVED TO BE WARRANTED.

I AM PLEASED TO REPORT THAT THE VOLUME OF CONSUMER COMPLAINTS HAS DIMINISHED SUBSTANTIALLY SINCE ISSUANCE OF THE BUREAU'S ORDER IN FEBRUARY 1989, TO ABOUT HALF THE LEVEL PRIOR TO THE PEAK PERIOD OF NOVEMBER 1988 TO JANUARY 1989. NONETHELESS, AOS CONTINUES TO COMPRISE THE SINGLE BIGGEST CATEGORY OF CONSUMER COMPLAINTS BEFORE THE BUREAU, CURRENTLY IN THE RANGE OF 125 TO 150 A MONTH. BOTH THE NUMBER AND NATURE OF THE COMPLAINTS WE RECEIVE TODAY TELL US THAT SIGNIFICANT PROBLEMS PERSIST.

CONSIDERABLE CONCERN REMAINS REGARDING THE RATES CHARGED BY SOME AOS PROVIDERS. ALTHOUGH WE HAVE NOTED A GENERAL DECLINE IN AOS RATES SINCE THE BUREAU INSTITUTED ITS INVESTIGATION IN MARCH 1988, THE VAST MAJORITY OF AOS COMPLAINTS BEFORE US CONCERN THE RATES CHARGED. IN MANY CASES, THE AOS COMPANIES RESOLVE THESE COMPLAINTS BY GIVING THE COMPLAINING CUSTOMER A CREDIT OR PARTIAL CREDIT, USUALLY THE DIFFERENCE BETWEEN THEIR RATES AND THE RATES THAT WOULD HAVE BEEN CHARGED BY AT&T FOR THE CALL. WHILE WE HAVE ENCOURAGED THESE COMPLAINT RESOLUTION EFFORTS, ONLY THOSE CUSTOMERS WHO COMPLAIN ARE BENEFITTED. FOR OTHER CONSUMERS, OR FOR BUSINESSES, FOR EXAMPLE, WHERE AN EMPLOYEE MAKES THE CALL BUT THE BILLING OFFICE RECEIVES THE BILL, THE PROCESS MAY NOT WORK. THEY MAY NOT HAVE SUFFICIENT INFORMATION TO EVALUATE THE CHARGES THEY RECEIVED OR KNOW TO WHOM TO COMPLAIN.

CONSUMERS CONTINUE TO COMPLAIN OF INCIDENTS OF CALL BLOCKING AND CONFUSION ABOUT WHO IS PROVIDING SERVICE. THESE CONCERNS ARE COMPOUNDED BY THE FACT THAT MANY CONSUMERS REMAIN CONFUSED ABOUT THE NEED TO ACCESS, AS WELL AS HOW TO ACCESS, THEIR CARRIERS OF CHOICE. EVEN WHERE AN AOS COMPANY IDENTIFIES ITSELF BEFORE CONNECTING A CALL, THE CONSUMER OFTEN DOES NOT REALIZE THAT COMPANY, WHEN IT ACCEPTS A CALLING CARD ISSUED BY ANOTHER CARRIER, DOES SO FOR BILLING PURPOSES ONLY AND WILL BE CHARGING THE CONSUMER AT THE AOS COMPANY'S RATE. OFTEN, THE RESULT IS THAT THE CUSTOMER RECEIVES A BILL FOR AN AOS

PROVIDER'S SERVICE WHICH THE CUSTOMER BELIEVES IS EXCESSIVE OR ERRONEOUS.

AOS PROVIDERS HAVE GENERALLY ATTRIBUTED PERSISTENT CONSUMER COMPLAINTS REGARDING CONTINUED CALL BLOCKING AND CONSUMER CONFUSION, DESPITE THE BUREAU'S TRAC ORDER, TO: (1) THE LIMITATIONS OF SOFTWARE AND EQUIPMENT CONFIGURATIONS, (2) THE NEED TO STOP FRAUDULENT CALLING, (3) THE FAILURE OF LOCAL TELEPHONE COMPANIES TO PROVIDE BILLING AND COLLECTION AND VALIDATION SERVICES TO ALL INTEREXCHANGE CARRIERS ON A NONDISCRIMINATORY BASIS, AND (4) THE INABILITY OF ALL SERVICE PROVIDERS, INCLUDING AT&T, TO ENSURE THAT CALL AGGREGATORS SUCH AS HOTELS PROVIDE ADEQUATE NOTICE TO THE PUBLIC OF THE PRIMARY SERVICE PROVIDER FROM A GIVEN TELEPHONE AND OTHER OPTIONS WHICH ARE AVAILABLE. IN SOME INSTANCES, CALL AGGREGATORS REFUSE TO PLACE ON OR NEAR THEIR PHONES THE IDENTIFICATION AND INSTRUCTIONAL MATERIALS THAT ARE BEING DISTRIBUTED BY OPERATOR SERVICE PROVIDERS AS REQUIRED BY THE TRAC ORDER. THE TRAC ORDER ALSO MANDATES THAT THE CONTRACT BETWEEN THE AOS FIRM AND THE AGGREGATOR REFLECT THIS REQUIREMENT.

WHATEVER THE ASSERTIONS AS TO CAUSES, AND AS TO WHO SHARES WHAT RESPONSIBILITY, PROBLEMS PERSIST. INTEREXCHANGE CARRIERS AND AOS PROVIDERS CURRENTLY PAY COMMISSIONS, RENT OR OTHER COMPENSATION TO CALL AGGREGATORS -- SUCH AS HOTELS, AIRPORTS AND

HOSPITALS THAT HAVE A RELATIVELY "CAPTIVE" CLIENTELE -- BASED ON THE OPERATOR-ASSISTED CALLS PLACED OVER THE AGGREGATOR'S TELEPHONES WHICH ARE PRESUBSCRIBED TO THAT CARRIER OR AOS COMPANY. THIS HAS PROMPTED CLAIMS THAT OPERATOR SERVICE PROVIDERS TODAY ARE OPERATING LARGELY TO THE BENEFIT OF THEIR "PARTNER", THE CALL AGGREGATOR, AND AT THE EXPENSE OF THE END USER, THE CONSUMER.

TO ADDRESS THESE CONTINUING CONCERNS, THE BUREAU HAS UNDERTAKEN SEVERAL IMPORTANT STEPS. FIRST, THE STAFF IS DRAFTING FOR COMMISSION CONSIDERATION A PROPOSED RULEMAKING PROCEEDING TO ADOPT REGULATIONS APPLICABLE TO ALL OPERATOR SERVICE PROVIDERS. THE OBJECTIVES OF THIS RULEMAKING PROCEEDING WILL BE TO:

(1) ADOPT RULES TO MAKE CLEAR THAT THE REQUIREMENTS OF THE TRAC ORDER APPLY TO ALL OPERATOR SERVICE PROVIDERS, AS WELL AS TO CALL AGGREGATORS WITH WHOM THEY CONTRACT FOR SERVICE.

(2) ADOPT RULES BEYOND THE TRAC ORDER REQUIREMENTS WHERE APPROPRIATE. FOR EXAMPLE, AS PROVIDED IN THE LEGISLATION NOW PENDING, REQUIRE AN AOS PROVIDER TO DISCLOSE ITS BILLING AND COMPLAINT

RESOLUTION METHODS TO THE CONSUMER UPON REQUEST.

(3) STOP THE PRACTICE OF CALL BLOCKING, AND REQUIRE THAT ANY TECHNICAL CHANGES IN NETWORKS, SOFTWARE OR EQUIPMENT BE MADE.

(4) OBTAIN EVIDENCE REGARDING PROBLEMS EXPERIENCED AT THE STATE LEVEL AND THEIR EFFORTS TO PREVENT ABUSES BY OPERATOR SERVICE PROVIDERS. WE WILL UTILIZE THAT EVIDENCE IN OUR DELIBERATIONS AND WORK COOPERATIVELY WITH STATE OFFICIALS TO ADDRESS THESE PROBLEMS.

SECOND, WE WILL CONTINUE TO REVIEW, AND INVESTIGATE WHERE APPROPRIATE, ALL CONSUMER COMPLAINTS AND INQUIRIES REGARDING OPERATOR SERVICES IN ORDER TO ENSURE THAT ALL SERVICE PROVIDERS -- NOT JUST THE FIVE DEFENDANTS IN THE TRAC COMPLAINT PROCEEDING -- NOT ENGAGE IN THE PRACTICES FOUND TO BE UNLAWFUL IN THE TRAC ORDER.

THIRD, WE WILL CONTINUE TO ENGAGE IN CONSUMER NOTIFICATION EFFORTS IN ORDER TO BETTER INFORM THE PUBLIC ABOUT AOS RATES AND PRACTICES AND THE CHOICES CONSUMERS HAVE. THESE EFFORTS INCLUDE STAFF PARTICIPATION IN VARIOUS CONSUMER AND INDUSTRY FORUMS TO

DISCUSS THE FCC'S POLICIES REGARDING OPERATOR SERVICE PROVIDERS, AS WELL AS PROVIDING TIMELY RESPONSES TO PUBLIC AND MEDIA INQUIRIES.

FOURTH, THE STAFF HAS BEEN INSTRUCTED TO ISSUE A CONSUMER BULLETIN EXPLAINING HOW A CONSUMER CAN ACCESS HIS OR HER CARRIER OF CHOICE AND IDENTIFYING CARRIERS' ACCESS CODES.

FIFTH, CHAIRMAN SIKES IS SENDING A LETTER TO STATE ATTORNEYS GENERAL ASKING THEM TO LOOK INTO PRACTICES WHICH MIGHT VIOLATE THEIR STATES' LAWS AS WELL.

THE SUBCOMMITTEE HAS ALSO ASKED THAT I COMMENT ON THE VARIOUS LEGISLATIVE PROPOSALS PENDING IN THE CONGRESS. LET ME REEMPHASIZE THAT I SHARE THE CONCERNS ADDRESSED IN THE SEVERAL BILLS. THEY WOULD REQUIRE THE COMMISSION TO ADOPT IN ITS REGULATIONS MANY OF THE PROVISIONS THAT THE BUREAU HAS ALREADY DETERMINED IN THE TRAC ORDER ARE NECESSARY TO REGULATE INDUSTRY CONDUCT HERE. AS I INDICATED, I HAVE ALREADY DIRECTED MY STAFF TO PREPARE A NOTICE OF PROPOSED RULEMAKING FOR THE COMMISSION WHICH WOULD INITIATE PROCEEDINGS TO ACCOMPLISH THIS, AS WELL AS INCORPORATING ADDITIONAL REQUIREMENTS AS NEEDED. SO WE ARE SUPPORTIVE OF THESE EFFORTS AND WILL WORK WITH THE SUBCOMMITTEE ON THEIR DETAILS.

THERE ARE SOME SPECIFIC PROPOSALS IN PENDING LEGISLATION, HOWEVER, THAT PROBABLY WOULD NOT RESOLVE CERTAIN PROBLEMS IN THE MANNER CONTEMPLATED. MOST IMPORTANTLY, SECTION 5 OF S.1660 AND S.1643 APPEARS TO REQUIRE THE COMMISSION TO SUBJECT AOS PROVIDERS TO TRADITIONAL RATE OF RETURN REGULATION UNDER TITLE II OF THE COMMUNICATIONS ACT. THIS WOULD POSE A MAJOR RESOURCE PROBLEM FOR THE COMMISSION, SINCE NON-DOMINANT CARRIERS HAVE NOT BEEN SUBJECT TO SUCH PROCEDURES. BUT MY CONCERN IS FAR GREATER THAN THIS. RATE OF RETURN REGULATION IS OFTEN DESCRIBED AS A "COST PLUS" SYSTEM. SOME OF THESE COMPANIES MAY WELL HAVE HIGHER COSTS THAN THE UNDERLYING INTEREXCHANGE CARRIER, INCLUDING THE LARGE COMMISSIONS THEY PAY TO THE CALL AGGREGATORS. A RATE OF RETURN REGULATION APPROACH THUS MIGHT NOT BRING ABOUT A DECREASE IN RATES CHARGED CONSUMERS AND WOULD PUT A GOVERNMENT IMPRIMATUR ON THE RATES CHARGED. IN LIEU OF SUCH AN APPROACH, THE BUREAU FAVORS THE PROMULGATION AND ENFORCEMENT OF REGULATIONS, MANY OF WHICH ARE SET FORTH IN THE LEGISLATIVE PROPOSALS, SPECIFICALLY DESIGNED TO ELIMINATE PRACTICES WHICH ARE FOUND TO BE HARMFUL TO THE CONSUMER. THESE MUST ENABLE CONSUMERS TO REACH THEIR CARRIER OF CHOICE AND THEREBY PAY THE RATES ESTABLISHED BY THAT CARRIER IN AN OPEN MARKET.

IN ADDITION, SECTION 4(A)(4)(C) OF S.1643 WOULD REQUIRE THE WITHHOLDING OF COMMISSIONS TO CALL AGGREGATORS AT LOCATIONS AT WHICH ANY BLOCKING OF ACCESS TO ANY INTERSTATE COMMON CARRIER

OCCURS. AS CRAFTED, HOWEVER, THIS PROVISION WOULD EFFECTIVELY EXCLUDE FROM COVERAGE ANY CARRIER WHO DOES NOT PAY "COMMISSIONS," BUT INSTEAD USES AN ALTERNATIVE FORM OF COMPENSATION, SUCH AS "RENTING" THE SPACE FOR THE TELEPHONE. THE INTENT OF THIS PROVISION APPEARS TO BE TO REDUCE OR ELIMINATE THE INCENTIVE WHICH AGGREGATORS MAY OTHERWISE HAVE TO BLOCK TRAFFIC FROM GOING TO OTHER SERVICE PROVIDERS. TO THE EXTENT THE PROVISION IS DIRECTED AT THE INDUSTRY-WIDE ELIMINATION OF CALL BLOCKING, AS I BELIEVE IT SHOULD BE, IT SHOULD APPLY WITH EQUAL FORCE TO ALL OPERATOR SERVICE PROVIDERS AND AGGREGATORS, NO MATTER WHAT THE FORM OF COMPENSATION.

FURTHER, SECTION 4(A)(6)(C) OF S.1660 AND S.1643 REQUIRE THAT, IF A CALL IS BILLED ON A BILLING CARD PROVIDED BY AN INTERSTATE COMMON CARRIER, THE AOS COMPANY SHOULD CHARGE THE RATE OF THAT COMMON CARRIER UNLESS THE AOS COMPANY PROVIDES A SPECIALIZED SERVICE. BELL OPERATING COMPANIES (BOCS) DO NOT PROVIDE INTERSTATE LONG DISTANCE SERVICE AND THEREFORE DO NOT HAVE NATIONWIDE INTERSTATE RATES. IF THIS PROVISION INCLUDES CALLS BILLED TO A BOC CALLING CARD, IT IS UNCLEAR WHOSE RATES SHOULD APPLY.

THIS PROVISION CAN ALSO CREATE TECHNICAL PROBLEMS FOR THE AOS COMPANY IN CASES INVOLVING THE USE OF AN AT&T CALLING CARD. AT DIVESTITURE, AT&T RETAINED THE SAME CALLING CARD NUMBER USED

BY THE BOCs, BOTH OF WHICH ARE THE SAME AS THE NUMBER USED BY THE PRE-DIVESTITURE BELL SYSTEM. THE IDENTIFYING NUMBER ON THESE CARDS HAS 14 DIGITS, THE FIRST TEN DIGITS OF WHICH ARE THE CARD HOLDER'S HOME TELEPHONE NUMBER. THEREFORE, WHEN A PERSON USES AN AT&T CALLING CARD, THE AOS COMPANY CANNOT DETERMINE WHETHER THE CARD IS AT&T'S OR A BOC'S.

NEVERTHELESS, THE BUREAU AGREES WITH WHAT APPEARS TO BE THE GOAL OF THIS PROVISION, NAMELY, THAT A CALLER SHOULD BE ABLE TO USE HIS OR HER CARRIER OF CHOICE AND PAY THAT CARRIER'S RATES. OUR PRIMARY MEANS TO ACCOMPLISH THIS END IS THROUGH BROAD APPLICATION AND VIGOROUS ENFORCEMENT OF THE CALL BLOCKING PROHIBITION, SO THAT CUSTOMERS HAVE ACCESS TO WHATEVER CARRIER THEY WANT. IN ADDITION, WE INTEND TO EXPLORE THIS ISSUE FURTHER IN THE CONTEXT OF THE RULEMAKING I HAVE OUTLINED TODAY, AND LOOK FOR SOLUTIONS.

NEXT, SECTION 4(A)(7) OF S.1660 AND S.1643 WOULD REQUIRE THE COMMISSION TO ESTABLISH MINIMUM STANDARDS FOR HANDLING EMERGENCY CALLS. I AGREE THAT THE ABILITY OF ANY OPERATOR SERVICE PROVIDER TO ROUTE EMERGENCY CALLS EFFICIENTLY TO THE APPROPRIATE PUBLIC SAFETY ORGANIZATION IS OF CRUCIAL IMPORTANCE. HOWEVER, THE COMMISSION HAS TRADITIONALLY DEFERRED TO STATE REGULATORS REGARDING SUCH ISSUES OF PUBLIC SAFETY AND EMERGENCY SERVICES, SINCE MOST EMERGENCY CALLS ARE LOCAL IN NATURE. A

GREAT NUMBER OF STATE PUBLIC UTILITY COMMISSIONS HAVE, IN FACT, ADOPTED OR ARE MOVING TO ADOPT, STANDARDS DEALING WITH EMERGENCY SERVICES. THE BUREAU SUPPORTS THE PROMULGATION OF REASONABLE STANDARDS TO PROTECT THE PUBLIC, BUT WE ARE CONCERNED ABOUT AVOIDING FEDERAL PREEMPTION IF IT IS NOT NECESSARY. WE WILL UNDERTAKE COORDINATION WITH THE STATES TO ADDRESS PROBLEMS IN THIS AREA.

AS I INDICATED EARLIER IN MY TESTIMONY, ONE OF THE RULEMAKING OBJECTIVES WILL BE TO MAKE CLEAR THAT THE REQUIREMENTS OF THE TRAC ORDER APPLY NOT ONLY TO ALL OPERATOR SERVICE PROVIDERS, BUT SPECIFICALLY TO CALL AGGREGATORS AS WELL. SOME AGGREGATORS MAINTAIN THAT THE COMMISSION DOES NOT HAVE JURISDICTION OVER THEM, EVEN THOUGH THEY MAY PERFORM CERTAIN ROUTING AND BILLING FUNCTIONS, AND NEGLECT OR REFUSE TO UTILIZE THE CONSUMER INFORMATION DISTRIBUTED BY OPERATOR SERVICE PROVIDERS AS REQUIRED BY THE TRAC ORDER. OFTEN IT APPEARS TO BE THE CALL AGGREGATOR, FOR PURPOSE OF EITHER MAXIMIZING THE COMMISSIONS IT RECEIVES OR PREVENTING FRAUD, OR BOTH, THAT IS PRIMARILY RESPONSIBLE FOR BLOCKING ACCESS TO CARRIERS OTHER THAN THE PRESUBSCRIBED SERVICE PROVIDER. NOTWITHSTANDING MY STATED INTENTION TO ADDRESS THIS MATTER IN THE RULEMAKING WHICH I OUTLINED, SHOULD CONGRESS PASS AOS LEGISLATION IT MAY WISH TO LAY THIS POTENTIAL JURISDICTIONAL ASSERTION TO REST BY INCLUDING CALL AGGREGATORS IN ANY PROVISIONS ADDRESSING PRACTICES SUCH

AS BLOCKING AND RECOGNIZING THE COMMISSION'S JURISDICTION OVER AGGREGATORS.

THE COMMISSION IS COMMITTED TO ADVANCING CONSUMER INTERESTS AND ENSURING THE AVAILABILITY OF COMMUNICATIONS SERVICES OPTIONS AT REASONABLE RATES. DESPITE PAST COMMISSION ACTIONS, SERIOUS PROBLEMS CONTINUE TO PLAGUE THE OPERATOR SERVICES MARKETPLACE TODAY. WE AGREE WITH THE SPONSORS OF PENDING LEGISLATION, THEREFORE, THAT A RULEMAKING PROCEEDING WOULD AFFORD THE FCC THE BEST OPPORTUNITY TO CONSIDER THE EVIDENCE AND ARGUMENTS CONCERNING THE EFFECTS OF AOS INDUSTRY PRACTICES AND TO FASHION AN APPROPRIATE REGULATORY FRAMEWORK. WE WILL, OF COURSE, KEEP CONGRESS FULLY INFORMED OF OUR PROGRESS AND STAND READY TO WORK TOGETHER TO ENSURE THAT CONSUMERS ARE TREATED FAIRLY.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY, AND I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

RICHARD M. FIRESTONE
CHIEF, FCC COMMON CARRIER BUREAU

RESPONSES TO

SENATOR DANIEL K. INOUYE'S
FOLLOW-UP QUESTIONS CONCERNING
ALTERNATIVE OPERATOR SERVICES

MARCH 2, 1990

Question: In your testimony before the Subcommittee, you objected to the legislative requirement in the Breaux and Dixon bills that the Commission be required to regulate the rates charged by these AOS carriers because it would force the Commission to engage in rate of return regulation.

Question a: I am unclear about your position on this matter. Is it the Commission's view that the "just and reasonable" requirement in the Communications Act requires the use of rate of return regulation? Or is it the reference in the bills to the carriers' "costs" that, in your view, requires the use of rate of return regulation?

Answer: The Bills require not merely the filing of "informational tariffs," but review of the companies' rates and charges by the Commission to determine if they are "unjust and unreasonable." This is the same standard applied by section 201(b) of the Communications Act (47 U.S.C. § 201(b)), which has been the basis for the rate of return regulation applied to tradititonal common carriers over the years. The Bills also mandate the Commission to require AOS companies to demonstrate that their rates and charges are just and reasonable "and refect the reasonable costs of providing service, plus a reasonable profit." This is the essence of a rate of return regulatory system, the "cost plus" type of approach I critiqued in my testimony. It would be a regulatory morass here, with the Commission having to establish accounting rules, cost structures, cost allocations and more (including interstate and intrastate separations problems) for dozens of firms that have never been part of such a system. This would be followed by tariff submissions and investigations, public and competitor filings in opposition to individual rate proposals, perhaps varying by individual locations. But most signifiantly, it is not likely to result in lower rates to consumers. Most AOS providers resell the transmission services of facilities-based carriers, to the cost of which they must add their own costs of doing business (and they may be relatively small, inefficient firms), plus the commissions they pay to call aggregators. If, as the Bills provide, they are entitled to these "costs of providing service, plus a reasonable profit," their very high charges to consumers would now

be sanctioned as having been approved by the Federal Government. That is why we feel the key solution is enabling customers to reach their carrier of choice and pay that carrier's rates, arrived at in a market where no one is a captive customer.

Question b: **Is it possible to amend the wording of these bills to permit the Commission to regulate the rates charged by these carriers without engaging in rate of return regulation?**

Answer: The rate regulation alternative raised in Section (4)(a)(4)(C) of S. 1643, and in some state regulatory proposals, is to limit the charges for an AOS provider to the rates of other carriers, some proposals specifying AT&T's rates, some "the lowest rate currently on file . . . among all other interstate carriers." Linking one company's prices to those of its competitor raises obvious antitrust policy concerns. Court review of regulatory action with respect to rates has focused on the costs of the firm providing the service, not on other carriers. To do otherwise, raises the Fifth Amendment question of a "taking" of property without due process.

Question c: **What is your view of the regulatory efforts in some of the-states to tie the rates of these AOS carriers to the rates of the dominant carrier (AT&T)?**

Answer: See answer to (b) above.

Question: In your testimony, you indicate that Chairman Sikes will be sending a letter to State Attorneys General asking them to look into practices which might violate their states' laws. Has such a letter been sent? Can you submit this letter for inclusion in the record of this hearing?

Answer: Chairman Sikes sent such a letter on February 16, 1990, to the Attorneys General of all states and Puerto Rico. His letter to the Attorney General of Alabama is attached as an example.

Question: Mr. Firestone, you stated that there is a cooperative relationship between an aggregator and an AOS provider that results in some value being added to the telephone service that justifies the aggregator in receiving a commission. Can you clarify what value the aggregator adds that warrants the payment of a commission?

Answer: In my testimony I stated that the current system of commissions, paid to aggregators such as hotels, airports and hospitals for delivering a "captive" clientele, has resulted in operator service providers acting to benefit their aggregator "partners" at the expense of the end user, the consumer. In answer to a question I indicated that, to the extent there is some basis for the paying of commissions, it must be on a cooperative relationship between aggregator and AOS firm that results in some value added. If the aggregator provides on-site equipment, maintenance, service, advertising and space, for example, there maybe some reason for the AOS firm to compensate him. Commissions based on providing a bottleneck, locking customers into an AOS provider's network, does not add value.

Question: In response to a question from Senator Burns concerning the status of the Capital Network/COMPTEL petition, you indicated that the Commission's handling of this petition would await the completion of a separate proceeding regarding Cincinnati Bell. The Cincinnati Bell proceeding, however, deals with access to validation data, while the CNS/COMPTEL petition deals with billing and collection services as well. How soon do you expect to act on the CNS/COMPTEL petition?

Answer: The CNS/COMPTEL petition was put out for public comment by the Commission. Action has not yet been taken because, as you have noted, the CNS/COMPTEL petition raises questions that were to be addressed in part in the Cincinnati Bell proceeding. The Commission's order in the Cincinnati Bell proceeding was released in late January 1990. In that order, the Commission found Cincinnati Bell's Transmittal No. 518 to be an unreasonable practice in violation of Section 201(b) of the Communications Act. This order also set out a new pleading cycle for the filing of supplemental pleadings that would address whether Cincinnati Bell's role in the development and use of a 14-digit Revenue Accounting Office (RAO) number and/or a 4-digit Personal Identification Number (PIN) is a Title II activity subject to the Section 202(a) of the Act. This supplemental pleading cycle ends on April 6, 1990. We anticipate that the supplemental pleadings will offer further detail about call validation and the information transfer process, which are central issues to resolution of the billing and collection issues raised by the CNS/COMPTEL petition. After what we expect to be an expeditious conclusion of the Cincinnati Bell proceeding, we will be in a better, more informed position to consider appropriate action in response to the CNS/COMPTEL petition.

Question: Instead of rate regulation, the FCC has instead required carriers to post information on telephones telling the consumer how to obtain access to other carriers. The FCC has also made it illegal for hotels and pay telephone owners to block calls to other carriers. My colleague, Mr. Dixon, tells us that there are several telephones within blocks of the FCC's headquarters that do not comply with the current requirements. How has the FCC enforced these requirements?

Answer: The Commission's most direct enforcement method has been our processing of complaints involving AOS providers. When a complaint is received, the Common Carrier Bureau's Enforcement Division serves it on the AOS company, the billing local exchange carrier, and the call aggregator, if identified. The company must investigate a complaint within 30 days and send a copy of its investigation report to the complainant at the time the report is filed with the Commission. Complaints concerning overcharges are generally resolved to the complainant's satisfaction within the 30-day investigation period, with 80 to 90% of them resulting in refunds to the complainant based on the rate of the complainant's preferred carrier. Complaints alleging violations of the TRAC order, however, have taken longer to resolve. My testimony talked about assertions made by AOS firms and call aggregators and how we would address those in the upcoming rulemaking.

We also view our efforts at educating the consumer and the various industries involved with AOS services as a significant way to prevent the types of violations described by Senator Dixon. We have issued a consumer bulletin, have encouraged press coverage of the AOS issue, have worked with state regulatory commissions, and have been involved in numerous meetings with industry participants.

We believe the rulemaking with which we are proceeding will address many of the remaining AOS problems and result in rules that will prevent further problems and expedite their prompt resolution.

Question: Some people argue that AT&T should be forced to establish a "1-800" number, like all other carriers do, so that customers can obtain access to AT&T's operator services no matter what telephone they are using. How do you feel about this idea?

Answer: Requiring AT&T to establish a "1-800" number would solve some blocking problems by providing an alternative means of access to AT&T's network. It would not, however, be a complete solution since some telephones can be programmed to block any of the three types of access code dialing, 10XXX, 1-800, or 950-10XXX. For example, if an owner decided to block "1-800" or the "950" alternative, we would still have to enforce the blocking prohibition against such a violator of the TRAC order. In the rulemaking with which we are now proceeding, we intend to explore fully the costs and benefits of requiring all service providers, including AT&T, to implement 1-800, 950-10XXX, and 10XXX access dialing.

Question: **In the TRAC order, the FCC proposed to solve the "call splashing" problem after receiving input from an industry association. This group, however, was unable to come to a consensus solution to this problem. Senator Dixon's bill would ban all call splashing. How do you feel about this provision?**

Answer: In the rulemaking proceeding on AOS issues, the Commission intends to explore all call splashing solutions, including the ban suggested by Senator Dixon. The Commission also will consider the Carrier Liaison Committee Call Splashing Report, which recommends a number of alternatives to a flat prohibition. As you have noted, the Report concluded that no single solution could be implemented without substantial costs and delay. One goal of the rulemaking is to weigh cost and delay factors in deciding upon a technically practicable solution to the splashing problem. The goal, of course, is to find the best solution in the shortest possible timeframe.

Question: **Many consumers complain that they are charged for calls that are never completed. The bills contain provisions that bar operator services companies from "knowingly" charging for calls that are not completed, but the "knowingly" restriction would appear to swallow the rule. What can be done to prevent customers from being billed for incompleted calls, other than subsequently asking for a refund?**

Answer: In our discussions with interexchange carriers, we have been advised that billing for incompleted calls results primarily from the lack of an answer supervision capability in areas in the country where equal access is not yet available. The lack of answer supervision results, in some cases, in charges for unanswered or incompleted calls because the carriers are unable to determine at precisely what moment a call is answered, or whether the call is answered at all. Presently, a consumer's only recourse is to request a refund if an incompleted call has been improperly billed. Through the informal complaint process, the Commission has been successful in obtaining refunds for complaining consumers in the form of credits when the consumer has been unable to resolve the matter with the carrier involved. Thus far, we have received comparatively few of these complaints. We anticipate an end to this billing problem, however, when equal access is universally implemented. As equal access is implemented, all interexchange carriers and AOS companies will have the technical capability to monitor the completion of calls, thereby eliminating the billing problems associated with unanswered and incompleted calls. Currently, approximately 93% of the nation's lines have been converted to equal access. Hence, billing for incompleted calls should become less common as the remaining lines are converted; conversion is therefore the best solution to this problem.

Question: In response to the TRAC petition last year, the FCC ordered an end to "call blocking." Yet several of the principal defendants in that proceeding have applied for waivers of the FCC's nonblocking rule. When does the FCC plan to rule on these waivers? Why would the FCC consider granting these waivers if they are directly in conflict with its own order?

Answer: As your question implies, the Commission should not, and does not, waive its rules routinely. A very high hurdle must be crossed before a waiver will be granted. It is conceivable that a waiver might be granted in the AOS area if, for example, the applicant could demonstrate with specificity that its current equipment at a particular location could not be unblocked because of technical limitations and its immediate replacement costs would be prohibitive at this time, or if unblocking immediately would make the applicant susceptible to demonstrable fraud in the use of its telephones.

The obligation to unblock that was imposed by the TRAC order remains in effect unless a waiver is obtained. The waiver requests mentioned in your question did not attempt to show specifically how technologies and equipment at particular locations justified waiving the unblocking requirement. Since the petitions were filed, the Bureau has informally encouraged the key players to enter into a dialogue with a view toward a satisfactory resolution of the problems associated with call blocking. This issue affects not only AOS providers, but also local exchange companies, all long distance companies, call aggregators, and equipment manufacturers. Resolving this issue is one goal of the upcoming rulemaking proceeding.

Question: As you know, a representative of the American Hotel and Motel Association testified that the cost of upgrading or installing new equipment in the lodging industry to allow access to 10XXX calls would cost about $2.3 billion.

Question a: Do you think it is reasonable to require the lodging industry to bear this cost to fix a problem (namely high operator services rates) that are the responsibility of the AOS provider?

Answer: Call aggregators are being paid commissions, often based on delivering captive clientele to an AOS firm. Allegations have repeatedly been made that some of the blocking being done today is being done by aggregators. Nonetheless, unblocking calls without being subjected to fraud risks may cause the owners of technically limited equipment to bear the costs of upgrading or installing new equipment. We are uncertain, however, about the actual level of these costs because we have not yet had an opportunity to examine with detailed data conflicting claims on equipment capabilities and costs. The question of unblocking costs under various scenarios and who should bear them will be studied very carefully in our AOS rulemaking proceeding.

Question b: Does your analysis of this question change if the Commission and/or the courts ultimately require all telephones for transient customers to implement billed party preference? In other words, will the investment in upgraded and new switching equipment by the lodging industry be unnecessary if billed party preference is implemented?

Answer: Billed party preference, as currently contemplated, would not eliminate the need for equipment that allows access to 10XXX calls. With billed party preference, switching equipment would have to allow routing to whichever interexchange carrier is presubscribed to the line that is to be billed for the call, including carriers that are accessible through 10XXX. It should be noted, however, that a petition for rulemaking on the issue of billed party preference is currently under consideration, and we contemplate further examination of this subject in greater detail. As noted in my testimony, however, billed party preference is put forward even by its supporters as a solution to industry-wide problems no sooner than 1995.

RICHARD M. FIRESTONE
CHIEF, FCC COMMON CARRIER BUREAU

RESPONSES TO

SENATOR JAMES EXON'S
FOLLOW-UP QUESTIONS CONCERNING
ALTERNATIVE OPERATOR SERVICES

MARCH 2, 1990

Question: What is the status of the pending petition requesting a rulemaking on the issue of billed party preference?

Answer: In April 1989, the Bureau issued a Public Notice requesting comments on Bell Atlantic's petition for rulemaking on billed party preference. The comment cycle closed last summer. The staff is reviewing the comments and reply comments filed by the various parties in the proceeding and is currently considering options on how best to proceed. Even its proponents suggest technical capabilities to begin to provide billed party preference will not be available until 1993-1995.

Question: Should payphone users be allowed to access their interexchange carriers of choice on a nondiscriminatory (without requiring extra codes or digits) basis? Is this technically and economically feasible? Would mandated universal billed party preference provide such a capability? If not, why?

Answer: Payphone users should be allowed to access their interexchange carriers of choice. The inability of any end user, including payphone users, to gain such access distorts and impedes the operation of a fully competitive telecommunications marketplace. The technical and economic aspects of eliminating call blocking in a manner that would ensure consumers access to their carriers of choice will be fully explored in the rulemaking outlined in my testimony.

Permitting payphone users to obtain access to their interexchange carrier of choice without dialing extra codes or digits is, in concept, a desirable goal. Billed party preference, however, is still very much in its formative stages, and there is considerable dispute over a number of issues that relate directly to the public interest ramifications of billed party preference. These issues include the cost of implementing such a system; claims that billed party preference would require callers to interface with two separate operator service systems (and in some cases to provide duplicative information to both systems); claims that billed party preference would impede the development of innovative operator services by interexchange carriers; and others. Moreover, current estimates indicate that the service will not be technically practicable on an industry-wide basis until approximately 1995. The Commission intends to explore all of the benefits and costs of this proposal in its review of the Bell Atlantic petition.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ANSWERS TO QUESTIONS FROM SENATOR PACKWOOD TO
RICHARD M. FIRESTONE, CHIEF, COMMON CARRIER BUREAU
CONCERNING THE REGULATION OF ALTERNATIVE OPERATOR SERVICES

Question: What is the status of the pending petition requesting a rulemaking on the issue of billed party preference?

Answer: In April 1989, the Bureau issued a Public Notice requesting comments on Bell Atlantic's petition for rulemaking on billed party preference. The comment cycle closed last summer. The staff is reviewing the comments and reply comments filed by the various parties in the proceeding and is currently considering options on how best to proceed.

Question: Should payphone users be allowed to access their interexchange carriers of choice on a nondiscriminatory (without requiring extra codes or digits) basis? Is this technically and economically feasible? Would mandated universal billed party preference provide such a capability? If not, why?

Answer: I believe that payphone users should be allowed to access their interexchange carriers of choice. The inability of any end user, including payphone users, to gain such access distorts and impedes the operation of a fully competitive telecommunications marketplace. The technical and economic aspects of eliminating call blocking in a manner that would ensure consumers access to their carriers of choice will be resolved in the rulemaking proceeding outlined in my testimony.

I believe, further, that permitting payphone users to obtain access to their interexchange carrier of choice without dialing extra codes or digits is, in concept, a desirable goal. Billed party preference, however, is still very much in its formative stages, and there is considerable dispute over a number of issues that relate directly to the public interest ramifications of such a system. Moreover, current estimates indicate that the service will not be technically practicable on an industry-wide basis until approximately 1995 or later. I intend to explore all of the benefits and costs of this proposal in my review of the Bell Atlantic petition.

Senator INOUYE. I thank you very much.

It would appear to me in studying the two measures before us and reading the testimony of Senator Dixon that with competition the rates have gone up. Theoretically, with competition the cost to the consumer should come down. How do you account for this?

Mr. FIRESTONE. Mr. Chairman, I think you hit the nail on the head. What we have today is vigorous competition for the business of the call aggregator, competition to get the captive clients of the call aggregator, the people at the hospital, at the hotel, at the airport. Having captured the call aggregator, however, we do not see vigorous competition for the service to the consumer using that phone. And that we think is because the consumer today is deprived—in too many cases—of the ability to reach the carrier of his or her choice.

If they could reach that carrier, if they were not subject to blocking, then, the consumer would have a competitive set of choices in front of him and would pay the rates and obtain the service from the company that consumer chose.

Senator INOUYE. What is the prime obligational responsibility of the FCC? To the consumer or to the hotel, gas station or airports?

Mr. FIRESTONE. Very clearly, Mr. Chairman, it is to the consumer. That has been the focus of our efforts in the past, it will clearly be the focus of our efforts in the future. And that is why the emphasis on our approach to the AOS problem is to enable consumers, to give them the information they need and enable them to make their choices in an unconstrained market environment, and not subject them to being captive consumers.

Senator INOUYE. I gather from my rather simplistic study that this AOS problem is a very complex one. And there is no black and white answer to these problems. However, the Dixon bill seems to imply—and it is implied throughout—that these commissions are not justified. What are your thoughts, sir?

Mr. FIRESTONE. There are two aspects to that. To the extent that there is a service being provided, that there is a cooperative relationship between a hotel, a hospital that results in some valued added, there is some basis for the paying of commissions.

Our concern is that the commissions seem in many cases to be based on the captive nature of the clientele, taking advantage of the bottleneck that has been established controlling that set of clients. And so that is where we think the problem with the commissions lie.

Commissions would not be a problem if a consumer could reach the carrier of choice, because under those circumstances, to the extent any carrier paid a commission, it would only be based on the value that someone provided in the transaction, not based on the fact that they could deliver a captive customer.

Senator INOUYE. In a way, you have been involved in regulating the AOS situation for about a year now, and I gather you have tried your best to stop or prevent call blocking, and you have not been too successful, have you?

Mr. FIRESTONE. There has been progress made, we think. As I indicated, the number of complaints is down below half what it was at the time of the TRAC Order. We have gone out to industry groups explaining the TRAC Order to them, explaining their obli-

gations. We have been working with industry groups to try and find solutions to some of the technical problems you made reference to earlier.

But as I indicated, I do not think we have been anywhere near as successful as we should have been in the interests of consumers.

One of the questions that has been raised, for example, is the applicability of our order to the call aggregators themselves, because we have the finger pointing game going on at times. The AOS provider says we are not blocking, it is the call aggregator. The call aggregator says either the AOS is doing the blocking or the call aggregator is not subject to the requirements.

We think they are, in fact, subject to FCC jurisdiction. In the rulemaking, we are going to make that clear. But as I indicated in my testimony, if the Congress were to go forward with AOS legislation, they could clearly put that jurisdictional dispute to rest by making it clear that aggregators are not entitled to block and that they are in fact bound by the jurisdiction of the Commission.

Senator INOUYE. In your presentation, you indicated that it will be a top priority to come up with a scheme to stop call blocking. How do you propose to do that?

Mr. FIRESTONE. There are a number of proposals pending. First, I think we will be taking the straightforward approach, which is to say blocking is illegal. It violates the Communications Act, and we will not tolerate claims of either technical inability to comply or the alternative finger pointing that I made reference to earlier—that is, it is not my fault, somebody else in the transaction is doing it.

As far as technical solutions which will be adopted in the marketplace, that is a question that I think we will attempt to resolve in the rulemaking proceeding, and it really is a question of who bears what costs in the transaction. There are alternative ways to prevent blocking and yet still prevent fraud, which is usually the defense that is raised when someone says their equipment is incapable of meeting current standards. So the call aggregators and AOS providers could be bound by that.

The other alternative that has been suggested is that all interexchange carriers be required to provide alternate means of access, not only a 10XXX code, as it is called, to use from a phone, but also a 950 number or a 1-800 number by which they can be reached. And which of those solutions will ultimately be adopted in the marketplace we will work out in the course of this rulemaking that we are going to embark on.

Senator INOUYE. Bell Atlantic will be testifying later and they are pressing for a rather simplistic approach: the billed party preference system, leaving it up to the consumer who will pay the bill to decide what carrier should be used to carry the call. What is wrong with that?

Mr. FIRESTONE. Mr. Chairman, the notion of billed party preference as you described it, which is to enable consumers to chose their carrier, is exactly the notion that we have been pursuing.

The problem with the plan that is described as billed party preference is that it is based on future technology that is just beginning to be installed in our telephone networks. Bell Atlantic has said it would be 1993 at the soonest before they would have that

capability in place, 1995 for a number of the other major companies that are not quite as far advanced in the technology right now or in implementing it.

And what we are faced with today is a problem that your constituents are being blocked today. Your constituents today cannot reach their consumer of choice—excuse me, their carrier of choice. And so, while we will be addressing the issue of billed party preference in due course at the Commission, it is a possible future solution to a series of problems, but in the 1993–95 time frame. I would assume that is not something that the Congress is interested in the FCC waiting for.

Senator INOUYE. I have many other questions, Mr. Firestone, I would like to submit them to you for your study and response, if I may.

Mr. FIRESTONE. We would be pleased to do so.

Senator INOUYE. Senator Burns.

OPENING STATEMENT BY SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman, I have just a small statement here. I thought I was pretty well briefed on this subject. Thank you Mr. Firestone, for coming this morning and thank you to the rest of the panelists.

The telecommunications industry has undergone tremendous changes during the past decade and as new entrants have been introduced, they have introduced revolutionary products, technologies and applications. The quality and availability of telecommunication services and products have dramatically improved during the past decade due to the ability of service providers to compete in the marketplace.

Operator services is one of the last strongholds of monopoly control and while competition in the OSP marketplace over the last three years has brought consumers an array of new services, it has also brought forth confusion and concerns for consumers, industry participants and policy makers. However, the introduction of competition in a previously regulated market place generally brings an element of confusion for the purchasers and users of innovative products and services. For instance, one can reflect on the issues surrounding the advent of competition in the long distance market and identify parallels to the OSP market place.

But along with that has come some confusion and problems that I think it is hard in these kind of cases for a consumer to get a handle on. They do not know where—when they dial the phone, they do not know where they end up, and they do not know exactly where they are going to go. And it is very confusing, as the communications industry is to a lot of people who use it every day, present and—present company included.

And so as we go through these generally, I generally support S–1660 because it does protect the consumer's right to choose and yet avoids premature imposition of rates and commissions and penalties. It requires the OSP's to identify themselves to callers and upon request, give rates, billings procedures and procedures for filing complaints.

Further, OSP's are required to file their rates with the FCC and they are required to justify questionable charges. Thus, the Breaux bill offers OSP's an opportunity to improve operations and improve consumer acceptance. And I think that is what we have to look at in any kind of legislation in this field—consumer acceptance and credibility of the service.

So, I applaud the Chairman—the Chairman of this subcommittee—for opening up these hearings, and I am sure that it will enlighten a lot of us and probably give us some direction on which way we should go.

I would hope that at this hearing, along with talking about the need to protect the consumer—which is the very purpose of "the Breaux Bill"—we will also be able to bring to light some information as to what we in Congress or at the FCC can do to create a level playing field for the new competitors in this new OSP market. Specifically, one issue that jumps out at me would be the billing and collection agreements and validation services that all of these OSP's need to conduct their business. It appears that many OSP's are having a difficult time in getting billing, collection and validation services from some telephone companies.

With the advent of competition in the OSP industry, we have seen an array of services that the new entrants into this OSP marketplace have brought and made available to the traveler—like multi-lingual operators, billing options to various credit cards, voice mail, message forwarding, and being able to have conference calls from remore facilities—and we are now seeing the larger, more established companies having to respond to this competition. For that, I think we are all better off.

In conclusion, Mr. Chairman, I would note that anytime you take a government sanctioned monopoly and dissolve it and open that new market to competition—as is the case with OSP's—you are going to have consumer, industry and policy maker confusion as to what is going on in the marketplace. But I think that over time you will see that the American consumer and the American telecommunications industry will be better served by this pro-competitive policy. Such a procompetitive policy will bring about a vibrant and competitive market in the United States for our consumers and will allow our domestic companies to be better positioned to compete in the international market.

Thank you again, Mr. Chairman.

Mr. FIRESTONE. I understand that on June 1, 1989, Capitol Network System, Incorporated and the Competitive Telecommunications Association filed with the FCC a petition asking the FCC to mandate that all local exchange carriers make available billing and collection services and validation data to all operator service providers. What is the status of that petition, number one, and why has the FCC not acted in the eight months since it was filed? And when can we expect the FCC to take some action?

Mr. FIRESTONE. Senator, the petition you referenced was put out for public comment by the FCC and comments were received, as well as reply comments in August of 1989. At the same time, we had pending before us a proposed tariff proceeding involving Cincinnati Bell, which also dealt with questions of billing and collection and validation.

So I can back up for one moment. In the modified final judgment, Judge Greene ordered the divested Bell Operating Companies to provide these billing and validation services on a non-discriminatory basis to all carriers. The question before us in Cincinnati Bell was slightly different because it was not one of the Bell Operating Companies divested from AT&T, but had engaged in the past in jointly marketing calling cards and maintaining a database, along with AT&T.

So, before we turned to the broader question in the comptel petition that you reference, we were dealing with a tariff that had a time limit and investigation already under way with respect to Cincinnati Bell. We are going to be concluding that. Legal briefs are due in April. As soon as that proceeding is done, we will have before us a record on which we can judge the question of billing and validation services and the obligations of local exchange carriers to provide those kinds of services.

Senator BURNS. I think it very important that we move on—your testimony expressed concern with S. 1660, Senator Breaux's bill, and S. 1643, which is Senator Dixon's bill, which would require the FCC to apply rate of return regulation to OSP providers, the bills provided for the filing and review of informational tariffs. Would you describe why you believe this will produce the kind of results that you criticize?

Mr. FIRESTONE. Yes, Senator. The notion of an informational tariff is separate from the question of the paragraph which follows, which talks about the review of those tariffs and a finding by the Commission to—and I can quote the language from the bill, which is ""whether those rates are unjust or unreasonable."" That is the same statutory language that is found in Section 201 of the Communications Act, which is the basis upon which all of the rate of return regulation of all traditional carriers, all traditional telephone service providers, has been undertaken over the years.

A finding by the Commission that rates are just and reasonable, or the reverse, that certain rates are unlawful because they are unjust and unreasonable, implies that we will have reviewed the costs of providing service. Again, that is specifically provided in the Breaux and Dixon bills, that we review the reasonable costs of providing service plus a reasonable profit. That is rate of return regulation, in the sense that we will have to go through and review the costs, the cost structures, the cost allocations of each of the companies involved and they will have to report to us on that basis.

But our review may well show that they are reselling the carrier services of other facilities-based carriers and paying rates to do so. They then have their own costs of providing services. Many of them are relatively small companies by comparison. Those costs are not necessarily low. And they then have the cost of paying commissions to the call aggregators.

So, under the terms of the bill, we will be reviewing all of those costs and a reasonable profit on top of those costs in finding that the rates are just and reasonable. And so you may actually have the impact of having these high rates that you have been referencing subject to a Commission finding, because they are ""cost based", being found to be just and reasonable.

That is not, I think, the solution that the Congress and the public is looking for. They are interested in not paying rates more than are derived in a competitive market, and that is why we think the crucial attack, if you will, is to ensure that customers get to the carrier of their choice and only pay the rates established by that carrier, and those carriers rates would be determined in a competitive market, because no one would be a captive customer.

Senator BURNS. Senator Dixon's bill requires withholding commissions from aggregators at locations where blocking occurs. Do you support that requirement?

Mr. FIRESTONE. I am very comfortable with that requirement. In fact, the Bureau has already determined that blocking is unlawful under the Communications Act, so this is, if you will, one more arrow in the quiver, changing the incentives now, to block because it increases the call aggregator's commission level, the more calls that are routed to the AOS provider in a given case.

My only concern with that paragraph of the legislation is what it goes on to say after that, which again, is a rate regulation type provision. But the notion of withholding commissions in any case where blocking occurs, we are quite comfortable with.

Senator BURNS. Mr. Chairman, I have no further questions for Mr. Firestone.

Senator INOUYE. Thank you, very much, Mr. Firestone.

Mr. FIRESTONE. Thank you.

Senator INOUYE. Our next witness is the Chairman of the Iowa State Utilities Board, Mr. Dennis J. Nagel.

STATEMENT OF DENNIS J. NAGEL, CHAIRPERSON, IOWA UTILITIES BOARD

Mr. NAGEL. Good morning, Mr. Chairman, members of the Committee.

My name is Dennis Nagel. I serve as chairperson of the Iowa Utilities Board. I appear today on behalf of the National Association of Regulatory Utility Commissioners, or NARUC, which represents the state regulators of telecommunications carriers.

The Association appreciates this opportunity to express our concerns about the growing operator services industry and the legislation introduced by Senators Breaux and Dixon.

State regulators have been alarmed by the abuses committed by operator service providers, or OSP's, since their proliferation two years ago. A 1989 NARUC survey of the industry has detailed the same concerns that have been expressed previously this morning. Many state law makers and regulators have aggressively responded to these problems. The Iowa General Assembly gave the Iowa Utilities Board the authority to regulate intrastate operator services. We have adopted comprehensive rules which were modeled on the NARUC standards.

Now, despite the moves by Iowa and virtually every other state, we can affect only a small portion of the operator service-provided calls. State officials are very frustrated with the fact that, notwithstanding our efforts, the OSP problem is primarily interstate in nature and, therefore, requires decisive action by the Federal Communications Commission.

Unfortunately, the FCC's efforts to date have been anything but decisive. Despite the many complaints against numerous operator service companies, the Commission has taken no action, and the FCC staff has addressed but the one complaint that has been referenced earlier. In doing so, it explicitly refused to regulate the OSPs' rates and ignored the routing of emergency calls, late bills and the billing of unmade and uncompensated calls.

In light of what we perceive to be a growing problem and the FCC's complacency, the NARUC has strongly supported legislation to require the Commission to do its job. We were closely involved with the evolution of H.R. 971 as it moved through the House last year. Senator Breaux's bill, S. 1660, is the product of that effort. We feel it responds directly to the concerns voiced by telephone customers, and we commend him for introducing it in the Senate.

NARUC has not formally addressed the differences between his bill and the bill introduced by Senator Dixon. The bills are identical in most parts, but the Dixon bill contains two additional requirements for the industry.

I am speaking on an individual basis now, Senator, but I am personally inclined to support the provision in Senator Dixon's bill which provides that OSP's would withhold commissions from aggregators engaged in blocking and would limit rates under that circumstance to the lowest rate on file with the Commission.

However, I have reservations about the second provision, which would prohibit the practice of call splashing. Call splashing is defined as the transfer of a call from one operator service provider to another at a point which is different from the point at which the call originates. We are concerned that splashing has often resulted in unfair billing for calls from the locations other than that from which call originated, but I feel it is better to address this problem directly, as Senator Breaux's bill does, by requiring that splashed calls be billed at the rate that would apply to the call if it were made directly from point to point.

By prohibiting splashing outright, Congress could strike a significant blow against developing competition. Such a prohibition could take most OSPs out of the markets, because, unlike the major long distance carriers, they do not have operators stationed across the country. We see no reason to prevent an OSP which is otherwise in compliance with the requirements of Senator Breaux's bill from handling splashed calls from a remote location if it finds the means of doing so.

Another objection I have to a provision of Senator Dixon's bill is the weakening of the disclosure requirements contained in Senator Breaux's bill. That bill, Senator Breaux's bill, requires that a written disclosure be provided to callers, that they can access their long distance carriers of choice and that that be located on or near the telephone. This language should be preserved because many consumers simply do not realize that they have this option.

Finally, the Dixon bill limits its definition of aggregator to only those telephone owners who receive commissions or compensation for calls handled by an OSP. I prefer the broader Breaux bill definition which does not require that an aggregator receive a compensation to be subject to the technical standards. I think it is impor-

tant that companies providing the same operator service be subject to the same rules.

In summary, I think that I can state very positively that my colleagues on the 50 other jurisdictions strongly support legislation which would force the FCC to do what the states have already done to protect the public from unscrupulous providers of operator services and to permit the benefits of competition to reach the actual users of operator services.

I thank you for your attention this morning. I would be glad to answer any questions you might have.

Senator INOUYE. Thank you very much, Mr. Nagel.

As a commissioner on a utilities board, do you find that there is a need for alternate operator services?

Mr. NAGEL. Senator, we at the state level, as you in Congress, had little to say about the divestiture of AT&T and the opening up of the system. We still have no control over that and whether or not there is a need may not be the critical point. And yet we have seen in Iowa already the broadening of competition in the inter LATA, intrastate long distance market bringing benefits to the consumers, and we have deregulated inter LATA traffic in Iowa because of that. And if OSPs can provide stronger competition to the end-user, then I think it is helpful.

Senator INOUYE. What are your thoughts on Bell Atlantic's billed party preference system?

Mr. NAGEL. NARUC did adopt a resolution last summer calling on the FCC to grant the Bell Atlantic petition to hold a rule making on this and consider whether billed party preference for all pay telephones is in the public interest. We, as an association, have not adopted our own position on that subject, but we believe it ought to be aggressively pursued. I think it is an untenable situation for Bell Atlantic and the other RBOC's to have to institute billed party preference for their pay telephones without having it being required for all pay telephones, because simply, there will be a migration from their pay telephones to other providers. And in that sense, I can certainly understand the Bell Atlantic argument.

Senator INOUYE. Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

Maybe I jumped the track here or something, Mr. Nagel. Do I understand you as saying that the public service commissions in the 50 other states have addressed this problem enough that no legislation would serve any great purpose?

Mr. NAGEL. Quite to the contrary, Senator. If I left that impression, I apologize. Let me give you an example.

Senator BURNS. I did jump the track.

Mr. NAGEL. Iowa adopted its legislation effective July 1. We adopted emergency rules to implement that legislation on July 1. So, we have had rules in place strongly regulating OSP's since that time.

Let me tell you one quick story. As I left Des Moines yesterday, I ran into a lobbyist from the state capital, an influential lobbyist. And he asked where I was going, I said, I am going to testify on AOS legislation. And he could not have been more emphatic in encouraging me to encourage you to adopt this legislation, because he said, we cannot even control it in the state capitol. And I said,

what do you mean? He said, we have our pay telephones in the Rotunda area between the House and Senate that all the lobbyists depend on. And I just went in, and I was just charged excessively by one of the AOS companies.

Senator BURNS. Now, let me stop you right there. Do you know what the charge was?

Mr. NAGEL. No, I do not, Senator.

Senator BURNS. I would be interested in knowing.

Mr. NAGEL. I would think it tends to be in Iowa, when we have these illustrations, from two to three times the rates of the long distance companies of—like AT&T or MCI.

I said well, that should not be, we have our state law and state rules in place. I said please file a complaint; we will follow up on it. But what we found out—or at least what he claims he found out—is that this AOS company simply replaced itself on the telephone without going either to the state general services department of the Iowa legislature for authority to do so.

We do not know how it was done. But it is a complaint that concerns me greatly. And if you would talk to my colleagues, they would tell you repeated stories where, notwithstanding the state efforts, we still have many abuses going on.

Senator BURNS. Thank you very much. I have no further questions. Thank you very much.

Senator INOUYE. Thank you very much, Mr. Nagel.

Mr. Nagel. Thank you.

Senator INOUYE. And now we have our first panel consisting of the following: the executive director of the Telecommunications Research and Action Center, Mr. David Wagenhauser; the general manager of the Operator Assistance Network of Van Nuys, California, Mr. Harvey M. Berg; the director of the AT&T Card/Operator Services of New Jersey, Mr. Gerald A. Hines; and the executive vice president for Legal and Regulatory Affairs of International Telecharge Incorporated of Texas, Mr. Steve Bickerstaff.

Let us begin with Mr. Wagenhauser.

Welcome, sir.

STATEMENT OF DAVID WAGENHAUSER, EXECUTIVE DIRECTOR, TELECOMMUNICATIONS RESEARCH AND ACTION CENTER

Mr. WAGENHAUSER. Thank you. With your permission, Mr. Chairman, I would like my full written testimony to become a part of the record.

Senator INOUYE. Without objection all of your statements, if you summarize, will be made part of the record.

Mr. WAGENHAUSER. I thank you for inviting me to testify today on behalf of the Telecommunications Research and Action Center. TRAC is a Washington, D.C.-based not-for-profit, consumer group committed to, among other things, ensuring that consumers pay reasonable charges for all their telecommunications needs.

About a year ago, in April of 1989, I testified before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on H.R. 971, the House companion version of S. 1660 introduced by Senator Breaux. In my testimony I told of the unjust and unreasonable and frankly egregious rates

and practices of a relatively new industry: the Alternative Operator Services or as we prefer to call them, the Absurdly Overpriced Services.

Almost a year since my testimony and about three to four years since the onset of this industry, I am sorry to say it is still not safe to go into the water—or in this case, a phone booth, hotel, hospital, airport, or practically anywhere else that an AOS shark may be operating.

The most fundamental and overt problem with these companies is the rates that are being charged, up to two and three times what is being charged by traditional carriers such as AT&T, US Sprint and MCI.

In my written testimony I have attached some recent, typical complaints to show the type of excessive and exorbitant rates that are being charged by these companies. For example, Frank Gilk of Fort Washington, Maryland recently wrote us stating that while on a business trip to San Francisco, he simply wanted to make a call home to his family from his hotel room, using his calling card. Instead, he was subjected to—as he states—"thieves," who without his knowledge and without any identification, charged him over twice the rate he would have paid with his preferred carrier.

One reason AOS companies can extract their excessive rates is that they are not operating in a competitive market. Most consumers have never heard of these companies (as I am sure some of you never have) and are unaware of the consequences of having these companies intercept their calls, at least until they receive their bill.

AOS companies count on consumer ignorance and have profited from it. Obviously, no consumer would use these companies, if they had any idea of the rates that were charged. And yet many of these AOS providers describe themselves as competitive.

In one respect they are right. There is competition in this market. Unfortunately, it is for the wrong person. Competition is not for consumers based on price for service, but for call aggregators or premises owners based on commissions or kickbacks, if you will.

The fact that an informed or knowledgeable consumer would not use these companies is only part of the problem. Even consumers who have tasted the AOS brand of competition, via shocking telephone bills, often cannot avoid them, even when they try. Such as the all too common case of Mr. P.D. Sterling, director of the Silent Harvest Ministries, located in Dallas, Texas.

Mr. Sterling related to us in a recent complaint that after going to Fort Worth Hospital to visit a very ill pastoral case, he was angry and frustrated to find that he could not access his carrier of choice to call his prayer network, because his access via 10XXX was blocked.

Having previously been overcharged by the same AOS company, he was forced to drive 15 miles in order to find a "safe" phone in which to make his competitive choice. [Laughter.]

Similarly, Dean Sparboe, a small businessman from Kernersville, North Carolina could not make his competitive choice because of call blocking. As a result, he states he was forced to use the AOS

company and paid three times the rate he would have with his preferred carrier.

These consumers are not unique. The FCC Common Carrier Bureau, as we have heard, has received thousands of concerns from consumers expressing outrage at being bushwhacked by high rates at hotels, hospitals, universities and pay phones. These, as well as other consumers, are infuriated at the lack of notification, billing of their calling cards at AOS rates, billing for unanswered calls and anti-competitive nature of call blocking.

While I am encouraged by Mr. Firestone's comments today, the FCC's past response to the consumer catastrophe over rates, notification and access has been a sad disgrace.

In April of 1988, the FCC released a consumer information bulletin that warned consumers of excessive charges and suggested consumers contact the Commission, if they felt they had been ripped off. The consumer's redress in this scam was made clear: Write into the Commission and a refund to the AT&T rate would come.

Unfortunately, TRAC was and continues to be concerned over the inequitable write-in rebate, since millions of consumers are simply unaware of this process. As a result, in July of 1988 TRAC and consumer action filed a complaint and petition to revoke authority to operate against five AOS companies.

The complaint provided evidence of rates and practices in violation of the Communications Act of 1934 and asked the Commission to regulate the named companies or get them out of the marketplace. The FCC's Common Carrier Bureau, under then-Chief, Gerald Brock responded to the complaint by putting scotch tape on the St. Andreas fault.

In his February 27, 1989 Order, Mr. Brock placed reliance on marketplace forces and specifically a two-pronged approach: first, consumer notice, including signs or placards posted on or near the phone containing the name of the provider, its address, a number for information and a statement that rate quotes are available on request; secondly, access to the consumer's carrier of choice.

TRAC and Consumer Action were particularly were concerned that Mr. Brock's action did nothing with regard to the biggest problem facing consumers: the rates charged by AOS companies. As a result TRAC and Consumer Action filed an application for review with the full Commission.

Significantly, as a result of Mr. Brock's decision, AOS companies can continue to price at whatever rate they wish, as long as there is consumer notification and unimpeded access to competing carriers. Even these token requirements, however, have proven empty.

First, with regard to the blocking prohibition, all the named companies have sought waivers of the no-blocking rule. As a result, blocking has continued to flourish. Secondly, the FCC's regulation that signs, placards or other notification be posted has been largely, if not totally, ignored. For example, I have yet to see or hear of one non-Bell owned pay phone with a disclosure sticker of any type. In fact, one need only to look at the District of Columbia, home of the FCC or, ironically, right under the FCC's nose, on the very same block as the FCC, to see how this requirement is being ignored by AOS companies and aggregators and not enforced by the Commission.

As recent complaints by numerous consumers will attest: rates are still astronomical and callers are still not able to make informed and intelligent marketplace decisions. In addition, even the well informed consumers all too often are captive with no option but to use the AOS service or find another phone. Mr. Brock's action has been something less than a paper tiger. It has perpetuated consumer confusion, frustration and anger. With such an environment, Congressional action is not only needed, it is mandated.

The two bills that have been introduced, S. 1660 by Senator Breaux and S. 1643 by Senator Dixon will go far in protecting consumers from unscrupulous marketeers. Both bills, together with keen oversight of FCC action to ensure enforcement would be good minimum first step in creating a more competitive environment.

There is additional language in Senator Dixon's bill which we have heard discussed today that I would like to discuss briefly. That language would result in consumers paying reasonable rates when alternative access is denied and undoubtedly would result in real incentives to quickly cease his anti-competitive practice. In particular, S. 1643, as written, would require that at any phone where a consumer is denied access to his/her carrier of choice, he/she will only be charged the lowest tariff rate currently on file at the FCC.

In addition, this bill would add language that if consumer access is blocked the aggregator could not collect the ever-important kickback.

We have consistently spoken out against the sweetheart Commission deals that have put us in this tragic situation. In addition, our goal that the consumers charge a reasonable rate and that access to his carrier of choice, whether by 950 or 800 or 10XXX access has been repeatedly advanced. For this reason, we support the rate-blocking provision of S.1643 or that, a minimum, consumers pay no more than the current tariffed interstate MTS rate of the dominant common carrier (AT&T) when access to the preferred carrier has been blocked.

Blocking for whatever reason is plain and simply an anticompetitive action. An aggregator who blocks and an AOS company who profits therefrom should not be rewarded.

AOS companies have had a chance to prove themselves in a non-regulated environment and a chance to redeem themselves in a token regulated environment. In both cases they have shown their callousness for consumer concerns. This is not the time to protect or encourage an industry that has shown no effort to compete for consumers or act in the public interest.

Consumers—and, yes, taxpayers—who phone their friends, family or office, want, deserve and are legally obligated to only pay reasonable charges. They should not have to hold the phone in one hand with a manual on how to make a call in the other. They should not have to search the streets for a "safe" phone, and they should not have to find out two to three months later that they have been ripped off by a company they have never heard of and never would have agreed to have used.

Consumer calls should be completed by the company they desire at reasonable rates.

A couple of years ago when I first heard of AOS, I heard this comment attributed to someone in the industry: "gouge now, regulate later." Well, these companies have had their field day at that consumer's expense. And it certainly is "later."

The call is now in your court, but do not forget, it is your constituents, your friends and your loved ones that are paying the price for this industry's greed and deception. It is time to put an end to this covert war on consumers.

Thank you.

Senator INOUYE. Thank you very much, Mr. Wagenhauser.

Mr. Berg.

STATEMENT OF HARVEY M. BERG, GENERAL MANAGER, OPERATOR ASSISTANCE NETWORK

Mr. BERG. Thank you, Mr. Chairman.

I appreciate the opportunity to appear here on behalf of the Operator Service Providers of America. OSPA is a trade association serving the operator services industry. Its members carry approximately 15 million operator calls each month. I have a detailed written statement to submit for the record, and I request to do so, sir. And I would like to briefly discuss the Senate bills 1660 and 1643.

I believe the operator services industry has progressed substantially in dealing with consumer issues since OSPA was formed about two years ago. The OSPA code of responsibility and compliance standards, the FCC's TRAC Order and the marketplace are all working together to provide basic consumer protections.

The Breaux Bill, and its companion in the House the Cooper Bill, substantially resolve consumer issues and OSPA supports those measures. Consumer awareness and freedom of choice are in everybody's best interest. There remain many difficult competitive and technical issues to be resolved.

These generally involve the many AT&T advantages resulting from the divestiture process and AT&T's historical monopoly. The Breaux bill wisely leaves these complex technical issues to the FCC for resolution and applies them equally to all carriers.

By comparison, the Dixon bill addresses these matters in a rather piece meal fashion which would have the practical impact of favoring AT&T. For that reason OSPA opposes the Dixon bill. If competitive matters are to be addressed by this Congress, we feel fairness requires that all of them be considered equally and together.

The two competitive issues addressed by the Dixon legislation, blocking and splashing, are problems whose effects are limited to a single carrier, and that is AT&T. Every other carrier has adopted forms of network access which eliminate these problems. AT&T refuses, choosing instead to portray the results of its own conscious decision as consumer abuse by its competitors.

OSPA shares the subcommittee's concerns regarding blocking but believes its members and their customers have a right to protect themselves from fraud. Both bills acknowledge that right.

It is important for this subcommittee to recognize that this blocking arises principally as a result of AT&T's refusal to deploy 1-800 or 950 access, relying instead exclusively on 10XXX access. And

this method subjects the property owner, the premises owner, to fraud. And therefore, for that reason this access is oftentimes blocked. Although MCI, U.S. Sprint and others have used alternative access methods, 1-800 or 950, AT&T to date still refuses.

OSPA also shares the committee's concerns regarding splashing but believes the industry must work together in achieving the most desirable technical solutions to this problem.

AT&T again could remedy the problem. But despite industry offers to cooperate, AT&T has again refused. As a result consumers receive less convenient and lower quality services at substantially greater cost to AT&T's competitors, the OSPs.

One other aspect of the Dixon bill is also troublesome to us. And that is the bill's redefinition of the term call aggregator. We believe this excludes locations that do not receive commissions for calls. As a result, by simply returning to a rental compensation scheme, we believe AT&T can effectively exempt itself from these blocking provisions.

Although not in either bill, the system of billed party preference has also been suggested for inclusion by some Bell telephone companies and has been discussed today. This system of access has been portrayed as a consumer protection issue. We believe to the contrary, that this would not afford the consumer more choices than they have today but would increase the price of every operator-assisted call, increase call processing times and expand the local telephone monopoly. Thus, OSPA is in opposition to the billed party preference access methodology.

Senators, thank you very much for your time. I would be very happy to answer your questions.

[The statement and questions and answers follow:]

Statement of Harvey M. Berg*
On Behalf Of
Operator Service Providers Of America
Before The
Subcommittee On Communications
Of The Senate Committee On Commerce,
Science and Transportation

February 7, 1990

The past 20 years have witnessed a swift evolution in national telecommunications policy from essentially a monopolistic structure to an increasingly competitive one. During this short period, the United States has advanced from monopoly-provided, rotary-dial, black telephones to an endless variety of "intelligent" telephone equipment communicating via any number of competitively-provided fiber optic, satellite or microwave networks. Gone forever are the days when users were presented with a single service option. Instead, emerging competition has created a cornucopia of consumer choices in services and prices, and has spurred almost exponential technological development. Inevitably, with each new range of choices available, there has been a period of confusion and frustration for consumers as they attempt to understand and adapt to the new environment.

The most recent area of long distance telecommunications to become competitive is the operator services market, consisting of calling card, collect, third party billed, and person-to-person calling. Callers utilize these forms of long distance service when they wish to have the charges billed somewhere other than to the originating telephone number, usually to a calling card or a home or office

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* Mr. Berg serves as a member of the Board of Directors of Operator Service Providers of America ("OSPA"), an industry trade association formed on April 1, 1988 to encourage self regulation, to develop industry-wide standards of service, to work with consumers, government agencies and service suppliers such as the Bell Operating Companies, to develop policies beneficial to end-users and operator service companies, and to serve as a technical, policy and information resource for OSPA members.

Mr. Berg's experience in the operator services field stems primarily from his capacity as President and General Manager of Operator Assistance Network ("OAN"), a company which supplies billing, data processing, and consumer inquiry services on behalf of numerous carriers who provide operator services in locations throughout the United States.

telephone number. We estimate that operator assisted calls account for almost 20 percent of long distance revenues. This portion of the long distance market remained an AT&T monopoly until late 1985, with significant numbers of competitors appearing only in the past two years.

The ability to offer operator services in competition with AT&T was brought about primarily by the availability of Bell Operating Company ("BOC") billing and collection arrangements. Operator assisted calls are billed to calling cards or telephone numbers issued by and known only to the telephone companies. Thus, unless those companies are willing and able to validate the calling cards and bill and collect the charges, operator services competition is not feasible. The market for such competitive services has been driven by the needs of locations with large numbers of transient callers requiring operator assisted services, such as hotels, hospitals, universities and pay telephones, and by long distance companies seeking to offer their customers a full range of services in competition with AT&T.

At first, the emergence of operator service competition brought about many of the same initial types of consumer confusion and frustration as other telecommunications services have experienced during their transition to competitive status. Such consumer reactions, no matter how temporary, are unfortunate for the service providers and for national telecommunications policy. Operator service companies, regulators, consumer groups, legislators and judges have therefore begun to struggle with the issues that operator service competition raises and the mechanisms necessary to ensure that new entrants can compete on equal terms with AT&T, just as they have struggled with similar issues in the past.

The Operator Service Providers of America ("OSPA") welcome this dialogue. OSPA does not condone nor deny the start up difficulties that the industry has experienced during its short history. In fact, OSPA was established in response to them. OSPA's purpose before this Subcommittee is to demonstrate that, in the brief life of competition in operator services, new entrants into the market have begun to offer numerous innovative enhancements, develop new equipment and technology, and, by their initiation of such services and use of advanced technology, provide AT&T with market incentives for the first time to begin offering such enhancements and replace outdated equipment. In addition, during this short initial period, significant steps have been made to inform consumers of the new choices they have available to them and to overcome substantial imbalances in the costs faced by new entrants vis-a-vis AT&T, thereby

bringing their rate levels more closely in line with the dominant carrier. While there is work left to be done, much progress has been made.

Clearly, even in its very early stages, competition can be seen as beginning to provide many of the same types of benefits to consumers that have occurred in other newly competitive telecommunications arenas. Moreover, as it has matured, the competitive marketplace and industry efforts (such as customer notice obligations undertaken through OSPA) are serving to inform consumers adequately of the presence of new suppliers in the market and the need to make informed choices among service providers. Marketplace and industry efforts have also placed downward pressure on rates and upward pressure on service quality. All of these factors have served to reduce the initial start-up problems associated with this new competition.

In February, 1989, for example, the FCC's Common Carrier Bureau issued its *TRAC Order* enacting requirements for interstate operator service companies. The rules adopted in that Order generally match the requirements in S.1660, introduced in the Senate in September of last year. The effects of all these efforts are shown by an informal survey of OSPA members which found that during calendar 1989 the monthly number of complaints to the FCC was reduced by approximately half while overall call volumes increased by about 50 percent. In addition, notice and call "branding" have become nearly universal, the practice of "splashing" has been reduced dramatically and soon is likely to be eliminated completely, and nearly all operator service companies have amended their contracts with hotels and others to prohibit the blocking of access to other carriers unless necessary to prevent fraud. We believe these facts provide abundant evidence that the efforts of the FCC and the marketplace are working effectively.

I. Benefits of Competition

Just as the public has benefitted from competition in other long distance services, the emerging marketplace in operator services has begun to bring new services and the results of greater efficiency to the American public. Improvements and innovations in service and technology are being spurred by new competition.

A. Market Discipline on the Dominant Carrier

The most important short term economic benefit of competition for consumers is pressure on the dominant carrier to improve and update its services and capabilities. For example, in response to competition AT&T has upgraded its operator network and begun to introduce a number of enhanced operator products.[1] To implement those improvements, AT&T announced that it was taking a substantial charge against earnings to cover, among other things, the costs of converting its many outdated operator consoles to new, more efficient technology.[2] Imposition of market discipline on a previously monopolistic service provider is the principal benefit of competition. Ultimately, these changes, and freedom of consumer choice, will bring substantial price competition to the public.

B. Innovation and Service Quality

Unlike the basic operator services which remained relatively unchanged over the 100 years of monopoly, recent service innovations introduced by new entrants have led to numerous new options and service offerings from all competitors — both new and old. For example, dominant carriers have recently begun to implement new and vastly improved emergency call handling technology, initially developed by and for competitive operator service providers.[3] This new equipment enables an operator to know the exact location of a caller, automatically provides the emergency service telephone numbers appropriate for that location, and can automatically connect the caller to the appropriate emergency service provider.

Another service innovation first introduced by competitive operator service companies (and now being implemented by AT&T and several BOCs) is a voice message "store and forward" service which detects a "busy" or unanswered call and provides the caller with an option to record a message for later automatic delivery by the operator service provider's equipment. This type of system differs markedly from previous messaging systems available to users, which typically

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1 *Phone +*, p. 18 (Jan. 1988).

2 L.A. Times, Dec. 2, 1988, § 4 (Business), at 1.

3 In fact, in a hearing before the Florida Public Service Commission, a Commission staff witness expressed the desire that Southern Bell improve its emergency call handling capability and noted that one OSPA member's emergency procedures might be difficult to meet as an industry standard.

required presubscription and substantial monthly fees. The messaging service currently offered by at least one operator service provider is available for use by the general public on an "as needed", per transaction basis and has met with great consumer success.[4]

The availability of competitive operator service providers also has led to significant increases in the availability of public payphone services and to new technological advances in the services which can be provided by payphones. Collect calling, for example, is now being handled by automated equipment, rather than live operators, in many cases. OSPA believes that the public interest is well-served by increased availability of public telephones. Revenue sharing by competitive operator service providers (and recently resumed by AT&T[5]) will enable the payphone industry and associated premises owners to recoup a share of the expenses of the payphone at their locations. In addition, operator service providers perform important functions, such as refund and trouble reporting services, for private payphone owners which have previously been unavailable from AT&T or the telephone companies and which therefore encourage increased availability of payphones.[6]

Foreign language operators are yet another innovation by operator service providers which have recently been echoed by AT&T (on a much more limited basis than many competitive providers). This service reflects and accommodates the changing ethnic population base in the United States and, in addition, provides valuable new benefits to foreign visitors, since hotels and payphones generally do not have the resources or the support systems available to assist foreign travellers in their own language. A service infrastructure such as this can only assist the United States in attracting and accommodating foreign visitors and in overcoming

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[4] A poll of OSPA's membership indicates that over half of the members currently offer some form of message services to users which, although they may not yet include "store and forward" features, are innovations which have provided substantial benefit to users.

[5] AT&T historically offered a commission plan to hospitality locations which enabled location owners to recoup a portion of their investment in telecommunications equipment from the revenues generated from the equipment, rather than through general room rate increases and the like.

[6] Competition in the provision of operator services has also motivated equipment manufacturers to advance significantly the capabilities of their pay telephone equipment. New equipment currently on the market has the capacity of offering automated operator service billing features from the telephone itself. Such advances in efficiency will certainly have the effect of reducing the cost of service for payphone users.

our national image as a country in which services to facilitate foreign travel are virtually nonexistent, making such travel difficult and unattractive to many foreigners.

II. Marketplace Solutions To Start Up Problems

The creation of a newly competitive industry over the past three years has not been without problems. The two principal areas of consumer concern have arisen primarily from the need to provide notice and consumer education regarding new service providers and the fact that competitive operator service rates have often been priced above those of the dominant carrier. Four factors have been at work in the marketplace to resolve these two consumer concerns: (1) self-imposed industry standards through OSPA; (2) marketplace pressure from consumers and location owners; (3) regulatory efforts and enforcement activities by the FCC and state regulatory agencies; and (4) efforts to reduce the technical and cost differentials between underlying services provided by BOCs to AT&T and those provided to AT&T's competitors.

Indeed, in an industry which has only been in existence for a short time, it is a tribute to the marketplace and the new competitors that consumer awareness has improved substantially through, among other things, customer notices at telephones and identification by service providers, and that rates have decreased substantially from early days. The progress made as a result of industry action and marketplace reaction is perhaps best illustrated by the fact that customer complaints have fallen dramatically in relation to the number of calls handled by competitive providers and that rates have decreased significantly. For example, based on an informal survey of OSPA members, it appears that in the first three months of 1989, operator service complaints at the FCC averaged over 200 per month. By the fourth quarter, the complaint rate had been reduced by about half. During that same period, we estimate that the number of calls handled by competitive operator service providers increased by approximately 50 percent.[7] This trend demonstrates the effectiveness of FCC and industry actions.

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[7] Information concerning the number of operator service complaints received at the FCC during 1989 is estimated based on an informal survey of OSPA's members. Industry data on the total number of calls handled by all competitive operator service providers during 1989 also is estimated based on that survey.

Complaints to state regulatory commissions also generally have declined. Even in the face of a doubling of call volumes carried by competitive providers, a NARUC survey of state regulatory commissions in early 1989 indicated that 21 states reported that they experienced a decrease in the number of complaints and/or comments with respect to operator services, and 16 indicated that complaints and/or comments had remained unchanged or leveled off. By contrast, only 6 state commissions reported an increase in complaints and/or comments.[8] Our survey of OSPA members found that, among that group, complaints to state agencies decreased by about two-thirds during 1989. And again, these reduced complaint levels are to be measured against greatly increased call volumes.

A. Industry Self Regulation

In April, 1988, key members of the operator service industry convened to better address the early industry start up problems. Out of that meeting came an industry consensus to form OSPA. Its members include:

- long distance companies that are adding operator services to their existing telecommunications offerings;
- long distance companies focused on providing long distance services primarily to callers requiring operator services;
- companies providing billing and collection services for the operator service industry;
- companies that provide operator services (without transmission capacity) to long distance companies;
- manufacturers of equipment and other suppliers to operator service companies; and
- network management companies that integrate the various components necessary to offer operator service and market a full service to customers.

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[8] Second Report on Alternative Operator Services, NARUC AOS Task Force, at 8-9 (Feb. 27, 1989). Eight state regulatory commissions did not state the direction of any change in the level of comments and/or complaints regarding operator services. *Id.*

The founders of OSPA (representing both large and small operator service providers) very much recognized the problems faced by the industry. Companies seeking to develop a long-term, viable competitive operator service industry realized that problems which were causing adverse consumer reactions would inevitably lead to a decreased market for competitive services and increased regulatory restrictions. The Association's first action therefore was to enact a detailed Code of Responsibility to facilitate industry self-regulation. The OSPA Code identified the problems facing the industry and obligated its members, among other things, to give users notice of their identity and their prices. The Code also stresses the importance of fair and competitive pricing, high quality service, and cooperation with regulatory agencies.[9]

As a condition of membership, all OSPA members must agree to adhere to the Code and, since January, 1989, have also been required to certify in writing that they will comply with it in all respects. Moreover, in February, 1989, OSPA made public a list of its members who are in good standing with OSPA's compliance requirements. Because many hotels and other traffic aggregators look upon compliance with these standards as a protective device for their end-user customers, adherence to the Code is a competitive benefit. The FCC and many state regulators have used the OSPA Code in considering the most appropriate form of regulation for operator services.

The industry itself has therefore undertaken on its own initiative to resolve many of the start up concerns which have also recently been addressed by the FCC and state regulators, and which form the impetus for this hearing. In fact, OSPA often receives consumer complaints directly. The last three months of 1989, for example, saw OSPA receive 14 such requests from consumers for assistance. In each case OSPA served the complaint on its member company and asked for a copy of the carrier's response to the consumer. The matter was resolved to the satisfaction of the consumer in nearly every case, often including refunds or credit adjustments.

In addition to these self-regulation measures, OSPA's other primary mission, which coincides with its efforts to resolve consumer concerns, is to work closely with the FCC, the Department of Justice, the Carrier Liaison Committee (a committee of the Exchange Carriers Standards Committee), and other industry

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9 A summary of the OSPA Code of Responsibility, compliance standards, and enforcement procedures is appended hereto as Attachment 1.

technical fora, to resolve the substantial technical and pricing discrimination issues besetting non-dominant operator service providers. These AT&T advantages have been the basis for many of the rate differentials and consumer confusion problems experienced during the initiation of competition in the industry. As discussed below, these competitive disadvantages must be removed if the goal of equal access costs for all carriers is to be realized.

B. Rate Decreases

Analysis of the pattern of rates in the industry indicates that competitive operator service rates have declined substantially in the last two years. These decreases can largely be attributed to the general precepts of the OSPA Code as well as marketplace pressure from consumers and location owners, who have an interest in ensuring that end-users making calls from their locations receive high quality service at reasonable rates.[10]

Some have suggested that the operator services marketplace is not attuned to the interests of telephone end-users because operator service companies and location owners have incentives to maximize the rates and commissions they receive without regard to the price to callers. However, consumer pressure clearly has an impact upon location owners and operator service providers for two fundamental reasons. First, location owners are in service businesses where they do not wish to alienate their customers. Hotels, for example, are very sensitive to complaints from guests about the price or quality of telephone service. They simply cannot afford to risk losing customers to their basic hotel service merely to make an extra 50 cents on a long distance telephone call.[11]

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10 That the marketplace is resolving problems with rates being charged by competitive operator service providers is perhaps best illustrated by the withdrawal of one of the earliest (and consequently one of the largest) competitors from the market. That industry member, who was responsible for a disproportionate number of complaints, was never a member of OSPA, and it seems clear that its reputation for excessive rates eliminated its ability to market its services to location owners concerned for their own reputation among their end-user customers.

11 For example, a trade publication reported that the Hyatt hotel chain "keeps close tabs on how the nondominant operator service companies are performing and their rates" and, indeed, required one competitive provider to "roll back its rates." The report also quoted a Westin Hotel official as saying he would not "jeopardize guests as far as service, quality or the charges made to them." *Pay Phone News*, p.1 (Apr. 1988).

Second, the ability of end-users to access multiple carriers from a single telephone precludes income maximization through excessive charges and high commissions. By pricing service significantly above other carriers, an operator service company will find that most callers soon learn to "dial around" it to competitors. High rates to support exorbitant commissions thus will serve to reduce income to the operator service provider and location owners, not increase it. With blocking prohibited, then, the marketplace will work to protect end-users.

It thus seems clear that, with consumer notice and the elimination of blocking wherever possible, the marketplace will work to reduce prices to end-users, not just to raise commissions to call aggregators. In fact, the most successful companies will be those that can pay the highest commissions while simultaneously charging the lowest prices. In other words, the most efficient carriers. The marketplace will reward those companies that can please both traffic aggregators and end-users. And that is as it should be.

Another important factor contributing to a decrease in operator service rates has been the availability, for the first time, of calling card and other validation data from BOCs to competitors other than AT&T. Until the telephone companies agreed to supply the necessary data, competitive operator service providers, unlike AT&T, were unable to validate BOC calling cards or obtain validation information for other dial "0" calls, such as third party and collect calls.[12] Thus, in the face of rapidly growing consumer use of BOC calling cards and the increasingly important need for competitors of AT&T to offer full services by accepting such cards, competitors experienced no good options. They could reject such calls altogether, and thereby sacrifice a large source of revenue (and in the process create consumer confusion and dissatisfaction) or accept calling cards without validation, thereby incurring substantial costs resulting from fraud. While validation of calling cards is now available, substantial pricing discrimination still exists in favor of AT&T, a circumstance which continues to have a significant impact upon operator service rates. That discrimination has been brought to the attention of the U.S. Department of Justice by OSPA and its elimination can be expected to have a further downward impact on rates charged by AT&T's competitors.

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12 *United States v. Western Electric Co., Inc.*, Civ. Action No. 82-0192, at 11, 13-18 (slip op. Oct. 14, 1988).

Many of the proposals advanced by S.1660 are designed —as are OSPA's Code and the FCC's recent *TRAC Order*[13] — to give consumers the information necessary to allow the marketplace to operate effectively. Because notice and freedom from blocking will provide callers with the knowledge they need to be informed consumers and the ability to use only the companies they desire, direct rate regulation is not only unnecessary, but will be counterproductive.

The flaws in traditional rate regulation have been well-documented in recent years and need not be repeated here. Some state regulators have proposed a different approach, requiring operator service competitors to limit their rates to no more than those of the dominant carrier, AT&T. OSPA believes there are substantial flaws in this concept.

Free and unencumbered competition is the general national policy approach to the production and distribution of goods and services in the United States. The marketplace, when working effectively, promotes efficiency through price competition and spurs innovation through service competition. Both of these objectives are thwarted, however, when one competitor's prices and price structure are imposed on all others.

Rate requirements based on a competitor's rates and rate structure can be very damaging to competition and, where the benchmark carrier dominates the market with an estimated 95 percent market share, may make competition economically infeasible. The cost structure and usage characteristics of one carrier's network simply cannot be fairly imputed to another. Thus, the imposition of rate regulation in this manner will risk the end of competition in the field, a result which certainly will not serve the public interest.

OSPA believes that the best way to protect consumers is to act to ensure the most effective competition possible. And the largest impediment to that goal today is the continuation of discriminations that favor AT&T over all others in the purchase of bottleneck services.

C. Consumer Awareness

Any time competition and consumer choice are introduced in a formerly monopoly market, a significant amount of consumer education is necessary to

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13 Memorandum Opinion and Order, *TRAC v. Central Corp., et al.*, FCC Mimeo No. DA 89-237 (released Feb. 27, 1989).

eliminate the confusion which inevitably appears. Callers have long been accustomed to receiving AT&T bills for operator-assisted long distance calls made while traveling, even when their personal long distance carrier at home may not be AT&T. When new bill pages with names other than AT&T began to appear in local telephone bills, a certain amount of confusion was inevitable.

To ameliorate that consumer education and awareness problem, the OSPA Code requires all members to identify themselves at the time a call is made and before charges accrue. Since we estimate that OSPA members account for more than 80 percent of all non-AT&T "Dial 0" calls, most such calls are now clearly "branded" with the name of the operator service provider. In addition, operator service providers supply notices to be placed at the telephone location to identify the service provider and describe how to obtain rate and other service information. The FCC *TRAC Order* also contains rules which require operator service providers to impose a notice requirement on their location-owner customers.[14]

OSPA believes that these requirements have already served to reduce consumer complaints by providing notice of the particular carrier at the caller's location and allowing consumers to make an informed choice by affording an opportunity to hang up and seek another carrier, if desired, before incurring charges for a call. Further, the OSPA Code requires that its members may not block access to other carriers and that they encourage location owners not to block such access. The FCC's *TRAC Order* similarly prohibits such blocking and requires operator service providers to include a non-blocking provision in their contracts with location owners.[15]

D. Continuing Cost and Technical Discrimination

Although the market pressures, self-regulation efforts, and judicial actions outlined above have served to reduce significantly consumer confusion and high rates, certain technical problems created by, and cost advantages available to, AT&T continue to impede fair competition in the operator service industry. Given the strides that the industry has taken to eliminate rate and service problems

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14 Memorandum Opinion and Order, *TRAC v. Central Corp., et al.*, FCC Mimeo No. DA 89-237 (released Feb. 27, 1989).

15 *Id.* Both the OSPA rule and the FCC order recognize that, in some situations, location owners may need to block certain forms of access to prevent fraud. As discussed below, many parties are working to overcome that problem, but the cooperation of AT&T is needed before it can be resolved completely.

despite this continuing discrimination, it can be expected that resolution of these issues will serve to reduce further rates and consumer confusion. As other long distance competitors to AT&T have done in the past, we seek the assistance and leadership of government policymakers in eliminating these discriminatory restrictions and costs in order to permit fair competition.

We recognize, however, that many legislators seek consumer-oriented action which can be enacted in advance of the resolution of the many contentious and technically complex competitive issues. The intricacies of the Bell System's calling card validation database and its interaction with AT&T's billing validation application computer, the costs and implications of the implementation of the telephone companies' line identification database and its billed party preference off-shoot, and the cost and technical effort required of AT&T if it is to accept answer number identification in electronic form during call transfer, are but three examples of the competitive questions which are pending before the FCC. Because OSPA supports consumer protection, it supports the approach of S.1660, which addresses consumer issues and delegates the technically detailed competitive matters to the FCC.

Resolution of the consumer problems should not be forced to await the outcome of debate over esoteric technological questions. Unlike S.1660, however, S.1643 seeks to resolve certain competitive questions in the manner advocated by AT&T and opposed by OSPA and many others. If the preferred approach is to address both consumer and competitive problems at this time, we believe that fairness requires consideration and resolution of all the important competitive issues. In OSPA's view, however, the FCC should be given the first opportunity to resolve these competitive and technical disputes. For that reason, OSPA is opposed to the approach of S.1643.

It is important, however, to review briefly the critical advantages which AT&T now enjoys in order to give a better understanding of the unfair cost savings that it enjoys over its competitors. The future ability of OSPs to provide serious rate competition will depend, in large part, on the elimination of these differences. While operator service companies recognize they cannot continue indefinitely to overcome these discriminatory costs by passing them through to end users, they also will remain hamstrung in their efforts to provide substantial price competition to AT&T until these imbalances are corrected.

1 Validation. Calling card and other validation information was not available to competitors of AT&T until mid-1988. Prior to such availability, fraud (or the threat thereof) contributed significantly to competitive operator service providers' costs and, therefore, their rates.

Although the availability of validation information has been a major advance for competitive operator service companies because it lowers their incidence of fraud, thus enabling them to become more price competitive, several facts indicate that the provision of validation may still favor AT&T in relation to its competitors. While the details of AT&T's validation arrangements with the BOCs are not public, the differences between the various BOC validation plans make it clear that competitors are not receiving the same treatment as AT&T. OSPA estimates that its members pay an average of about 15-20 cents for validation per completed call, while AT&T's costs are about one cent per completed call. These variations have led the U.S. Department of Justice to recommend to Judge Greene that he prohibit the BOCs from including in their prices for validation data costs attributable to services to AT&T other than validation.[16]

Other issues, such as whether AT&T's cost of validation incorporates a volume discount unavailable to smaller competitors because of their vastly smaller size remain to be resolved as well. On this issue, the Department of Justice also recommended an order prohibiting BOC restrictions on resale and sharing of validation service so that smaller carriers could achieve economies of scale similar to AT&T's.[17] OSPA believes that all competitors should have access to validation on cost-based, non-discriminatory terms for all information residing in the shared BOC/AT&T database and that any legislation which addresses competitive issues should resolve this problem.

Another important issue in this regard is the availability of validation information on those BOC shared database calling cards issued in AT&T's name. Although the numbers are assigned by the BOCs, reside in databases maintained by the BOCs, and are indistinguishable from BOC calling cards when used, AT&T claims an exclusive right to validate them. We estimate that these cards account for about 20 percent of call attempts, requiring competing companies to transfer

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16 Memorandum of the United States Concerning BOC Acceptance of Interexchange Carrier Calling Cards, Routing of Coin-Sent-Paid Traffic From BOC Public Telephones and Provision of Validation Data, Civ. Action No. 82-0192, at 31 (filed Mar. 13 1989).

17 *Id*. at 33.

the call to AT&T or seek another form of payment. Pacific Telesis recently has stated that it will begin providing validation information on all such cards. The other six Regional Bell Holding Companies, however, have not yet followed suit.

2 *Billing and Collection*. Calling Card calls, collect calls and third party billed calls — more than 90 percent of *all* "Dial 0" traffic — all must appear on a monthly telephone bill. Despite discounts offered by service providers to encourage callers to utilize commercial credit cards in lieu of BOC calling cards, calling cards remain the preferred billing mechanism among the vast majority of callers. Efforts by several companies to bill callers directly for calling card charges resulted in substantial consumer confusion and collection costs. Since the current marketplace dictates that operator service providers accept calling cards and that calling card charges be billed by local telephone companies, competitive operator service companies are captive to the rates those local carriers charge for the service.[18]

A survey of BOC billing and collection among OSPA members revealed that the charges for BOC billing and collection range up to $0.55 per bill plus $0.15 per call. Moreover, the cost of BOC billing and collection is typically roughly double the cost to bill a call through major credit card companies. For example, a competitive operator service provider's price for BOC billing typically amounts to roughly 15 percent of a $3.50 telephone call.[19] By comparison, billing by a major credit card company would typically amount to approximately 7 percent of that same call. Thus, the BOC charges are significantly higher than the credit card companies', a fact which graphically demonstrates the continuing monopoly power that the BOCs wield over billing and collection for telephone services.

In addition, although the rates AT&T pays for BOC billing services are not public, an AT&T tariff filing at the FCC indicated that its nationwide average

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[18] In spite of this overwhelming need for bottleneck BOC billing services in the provision of operator services and the unavailability of any alternative to the use of these services, the FCC has deregulated BOC provision of billing and collection. The Commission took this action in 1984, before operator service competition had arisen. In the context of "1+" service, which was the only long distance competition then existent, the FCC reasonably concluded that billing alternatives are present in the market. For "Dial 0" services, however, such alternatives are not present.

[19] This figure includes validation, the per message charge for billing and collection, and bad debt costs. (Unlike commercial credit cards, for which validation guarantees receipt of payment, BOC validation does not guarantee payment.)

billing cost for additional messages is 4.69¢.[20] By contrast, OSPA companies typically average approximately 24-45¢ for each message billed. Volume discounts serve to exacerbate this cost disparity under which only one carrier — AT&T — can qualify for the most favorable level of volume discounts due to the scale established by the BOCs and the fact that AT&T combines "1+" with "Dial 0" calls in achieving volume discounts. For example, the calling volume required to qualify for the best discount accorded by one BOC is 75,000,000 calls *per month*; a figure which represents about four times the nationwide volume of all operator service competitors combined. Obviously no competitor could hope to realize this discount.

OSPA advocates cost-based, non-discriminatory billing and collection service for *all* competing operator service providers, including AT&T, and has requested the Department of Justice to investigate possible discrimination among the BOCs in providing billing and collection services to OSPA members as compared to arrangements given to AT&T.[21]

In addition to the discriminatory billing and collection costs being borne by AT&T's new competitors, other residual benefits of AT&T's former monopoly status linger in the newly competitive marketplace. For example, whereas AT&T is able to bill through all of the roughly 1400 local exchange carriers nationwide, competitive operator service providers are currently able to bill through only approximately 600. The inability to bill calling card, collect and third party charges for callers who are served by some 800 local exchange carriers results in substantial revenue losses to competitive operator service providers and often creates additional costs resulting from the need to transfer to AT&T callers seeking to bill to those carriers' accounts.

3 *Technical Problems*. OSPA has been actively working with other members of the industry to resolve certain technical problems which inhibit an operator service provider's ability to offer users a simple and undisruptive means of transferring to the carrier of his or her choice. Several of these problems arise both as a matter of technical limitations and access choices within AT&T's

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20 AT&T Hospitality Network Service Tariff, filed Oct. 26, 1987, Transmittal No. 1046, CC Dkt. No. 88-105, at "Description and Justification", p. 24.

21 Letter to Nancy C. Garrison, Assistant Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, from Richard E. Wiley, Counsel to OSPA, dated November 23, 1988.

power to resolve, but which are outside the control of AT&T's operator service competitors.

For example, despite the willingness of an operator service provider to transfer a caller to AT&T upon request, such a transfer from the competitors switching equipment often results in an AT&T bill to users which shows the origination of the call as the location of the other carrier's switch, not necessarily the same as the actual location of the caller. This is known as call "splashing." OSPA and its members have repeatedly urged AT&T to accept identifying information in order to correctly bill the call, but to date AT&T has been unwilling to work with its competitors to resolve the "splashing" problem.

Splashing is exacerbated by the fact that AT&T, unlike other long distance carriers, does not provide multiple forms of access for its users. Therefore, if an operator service provider advises users to redial their preferred carrier's access number, the user's ability to reach AT&T may be hindered by the fact that the type of access used by AT&T presents the potential for substantial fraud and such access may therefore be blocked by a location owner. All other long distance carriers avoid this problem by making other forms of access available to their subscribers (*i.e.*, "950" and "800" numbers); only AT&T has determined to permit its users only a single method of access from non-AT&T locations (*i.e.*, "10288"). OSPA has urged AT&T to offer its users the types of access arrangements which would not generate the risk of fraud for location owners and would thereby allow them access to AT&T from all locations — and AT&T has refused.

Other technical issues exist in bringing operator services from a system designed for one monopoly service provider to a system in which multiple carriers now offer competitive service. OSPA has been active in initiating working forums with local exchange carriers and others in the industry to resolve these types of problems, such as standardizing the form and content of information and records, identification of subcarriers on local telephone bills, and other complex issues. As solutions to the "splashing", other AT&T transfer problems, and technical issues come about, OSPA expects the industry to continue to mature and refine its services to further resolve consumer confusion and frustration.

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Conclusion

For the reasons discussed herein, OSPA believes that, even in its early stages, competition in operator services has begun to provide many of the same types of benefits to consumers that have occurred in other newly competitive telecommunications markets. Moreover, as it has matured, the competitive marketplace and industry efforts through OSPA have served to inform consumers of the presence of new suppliers in the market and the need to make informed choices among suppliers. Marketplace and industry efforts have also placed downward pressure on rates and upward pressure on service quality, and can be expected to continue to do so. OSPA believes that all of these factors have served to decrease the initial start-up problems and end-user confusion associated with this new industry.

Supplemental Statement and Response of Harvey M. Berg on behalf of Operator Service Providers of America to Questions of Senator Slade Gorton on OSP Legislation

Q. **Last year, the FCC released the TRAC Order to create a measure of protection for consumers. What specific actions has your industry taken to comply with this Order and what effect do you think these changes have had on consumers and the marketplace? Can we expect continued improvements from the marketplace? Can we expect continued improvements from the Order, or must it be codified? If so, does this imply that not all carriers are currently complying with the Order?**

A. In April, 1988, the Operator Service Providers of America ("OSPA") was formed to serve the emerging competitive operator services industry. The Association has two fundamental missions. First, to act as a self-regulatory body for the industry, promoting innovation and integrity; and second, to advance competition in the provision of operator services by sponsoring and supporting government policies that will establish the most open market environment feasible. OSPA's self-regulatory efforts and goals are complementary to the requirements of the FCC's TRAC Order. In combination, the actions of the Commission and OSPA have made substantial progress toward elimination of consumer problems. As the attached Fact Sheet shows, for example, complaints about OSPs have been reduced from a high of about 50 per 1,000,000 calls in the Spring of 1989 to approximately 7 per 1,000,000 messages carried by December 1989.

The OSPA Code of Responsibility

In support of its goals, OSPA's first official action was to adopt a Code of Responsibility to which all members must adhere. The Code is very similar to the FCC's TRAC ruling. For example, it requires:

- consumer notice through call "branding" and signage;
- efforts to ensure caller access to the carrier of their choice;
- public disclosure of rates upon request;
- competitive pricing;

- high service quality; and
- prompt attention to consumer complaints.

The OSPA Code is intended to identify and address the problems that have arisen during the transition from a monopoly to a competitive marketplace. OSPA enforces the Code of Responsibility to ensure that its members maintain the highest standards of conduct in the industry.

Enforcement Efforts

Industry self-regulation is common in many sectors. What distinguishes OSPA's self-policing endeavors is the establishment of meaningful mechanisms to ensure that members adhere to the Association's high standards of conduct. OSPA's Compliance Enforcement Procedures require:

- written certification of compliance;
- quick action on complaints;
- fair adjudication of alleged violations.

Thus, in addition to identifying industry problems, OSPA has devised an effective means for carrying out its self-regulatory mission.

OSPA also sometimes receives complaints about members directly from consumers. When OSPA receives such a complaint, it serves it on the member company and requests a response. It has been OSPA's experience that virtually all of these complaints are resolved promptly to the customer's satisfaction, including, where appropriate, refunds and explanations of charges.

Service Improvements Attained

Even though OSPA has been in existence less than two years, the benefits of self-regulation are already evident. Both traffic aggregators and end users have become more aware of the benefits and risks of a competitive operator services marketplace. As a result, some service providers that engaged in business practices harmful to consumers have gone out of business. Moreover, through the OSPA Code and those educational efforts, companies that remain in operation have

become increasingly aware of the need to ensure consumer information and protection. It is a basic tenet of our economic system that free market principles and self-imposed industry standards are better regulators than government in a competitive marketplace. The operator services marketplace has proven to be no exception.

The FCC's TRAC Order and marketplace forces thus have been effective in correcting consumer problems and confusion encountered in earlier days. In particular, the Commission's recently announced rulemaking should make clear the universal applicability of the TRAC requirements to any carrier not yet in compliance. While OSPA believes that the FCC and industry efforts will continue to improve consumer awareness and protection, the Association does not oppose the additional steps contained in H.R. 971 and S.1660.

Q. How do your costs compare to AT&T's? I am particularly interested in your costs for billing, collection and validation services compared to AT&T's, and how that effects your rates. What, if anything, should Congress and/or the FCC do in this regard?

A. The prices which competitive operator service providers must pay for essential bottleneck services are substantially higher than AT&T's costs for the same services. While small operator service companies, clearly, will never enjoy the same economies of scale that AT&T achieves, nevertheless, in certain aspects of the operator services business -- validation, billing and collection -- we believe AT&T gains an unfair cost advantage by virtue of discrimination by the Bell Operating Companies ("BOCs") and other local exchange telephone companies. In the context of operator assisted long distance calling (approximately 15-20 percent of the market), these services are essential bottleneck offerings which should be part of "equal access."

Calling Card Validation

Approximately half of all dial 0 calls are billed to BOC or AT&T Calling Cards. By placing a call on a Calling Card, the customer can bill the call to a particular line number, usually at home or work. If a competitive OSP is asked to bill a call to a BOC Calling Card, it must first verify the validity of the card number or, in the alternative, risk not getting paid. The OSP validates a call by electronically querying the BOC provided database to determine the validity

of the card. Ordinarily, competitive OSPs must pay for these services on a per query basis. For example, today a typical OSP pays about 4-8¢ for each check with the database. Because about one of three calls is not completed due to no answer or a busy signal (this ratio is greatly increased by AT&T's refusal to permit validation of some BOC/AT&T calling cards), validation costs per billed call are in the 6-12¢ range.

In contrast, AT&T shares the validation database with the BOCs under various shared network facility agreements ("SNFAs") entered after divestiture. On October 14, 1988, the MFJ Court ordered the BOCs to provide all interexchange carriers with equal access to the database. The Court has not yet ruled on the appropriate method for granting such access. Pursuant to the SNFAs, AT&T and the BOCs merely split up the costs of the databases at the end of the year based on inter- and intra-LATA usage. Under this scheme, AT&T pays less than 1¢ per query. Hence, the validation costs of OSPs remain much higher than those of AT&T measured on a per call basis.

OSPs' validation expenses are further increased by AT&T's claim that certain aspects of the BOC-AT&T shared validation database belong exclusively to AT&T. All shared database calling cards are created and maintained by BOC facilities, and have the same telephone and personal identification number whether issued by a BOC, AT&T, or both. When the number of such AT&T calling cards is entered into the telephone system, it is indistinguishable from a BOC card. Nonetheless, AT&T claims sole ownership of those cards which bear its logo rather than a BOC's. Although exact figures are not available, it is estimated that as much as 20 percent of calls made using the BOC-AT&T shared database cards fall in this so called "AT&T only" category. These include calling cards issued by many Independent telephone companies who choose to issue cards only as an agent for AT&T, such as Cincinnati Bell.

Based on this claim of exclusivity, AT&T refuses to permit validation of these "AT&T only" cards for any other interexchange carrier. AT&T's refusal means that a caller attempting to use an AT&T card to make a call on another interexchange carrier (e.g., MCI, US Sprint, or another OSP) will appear to have an invalid calling card. This situation is the likely cause of the problem described by Sen. Exon in the February 7 hearing; the Senator's companion probably was unable to use a Lincoln Telephone calling card from an airport payphone because it was an "AT&T only" card which AT&T would not permit to be validated for the carrier serving the payphone. The result is either needless confusion for

holders of such cards or unnecessary validation and other significant costs for AT&T's competitors. In order to permit a caller to use such a calling card, for example, an OSP must transfer (or "splash") the call to AT&T. In so doing, the OSP incurs the cost of call validation, local access charges, and network usage expenses all without receiving any revenue for the call. AT&T is the only operator service provider not burdened with this problem.

Under an order of the Consent Decree Court, the BOCs have announced a plan to permit AT&T's competitors to issue calling cards similar to those of AT&T. Those so called "CIID" cards, however, will not be maintained in the BOC shared database and will be useful only from telephones presubscribed to that particular carrier. Use of an MCI card for an interLATA call thus would not be possible by means of the AT&T network. This limitation renders such cards practically useless. In short, the BOC proposal, although well-intentioned, does not remove AT&T's unfair advantage. The FCC also is investigating the validation discrimination caused by "AT&T only" cards in the context of an inquiry into the practices of the Cincinnati Bell Telephone Company.

OSPA believes that all calling cards maintained by BOC databases should be validated for all interexchange carriers without discrimination. AT&T's exclusive ability to bill to a substantial segment of the cards maintained in the BOC databases skews the marketplace in AT&T's favor significantly.

Billing and Collection

The vast majority of all dial 0 calls are collect, third-party, or Calling Card calls, all of which are billed to particular telephone numbers by transient callers and, hence, must be billed and collected by the telephone companies, the only ones who know the identity of the subscriber. There is a wide disparity among the BOCs for the prices for virtually identical billing and collection services. We believe that in all cases these charges are substantially above that paid by AT&T. However, because AT&T's billing and collection agreements are secret, it is difficult to verify this belief. OSPA has been working with the Department of Justice in trying to determine the existence and extent of any discrimination.

In addition to unequal billing and collection costs, competitive OSPs are disadvantaged vis-a-vis AT&T by their inability to obtain billing arrangements with many

independent LECs. AT&T is the only carrier that enjoys universal billing, a vestige of the Bell System's historical relation with the independent telephone companies. When an OSP is asked by a customer to terminate a call in a region where it has no billing agreement, it must transfer the call to AT&T. A Petition for Rulemaking has been filed with the FCC seeking rules barring discrimination by local telephone companies in the provision of billing and collection services.

A further problem arises in such call transfers because AT&T has refused to accept number identification from the originating location on transferred calls. This has resulted in the customer receiving a bill charged from the location of the OSP operator center, not the customer location. This practice -- known as "splashing" -- has been a major cause of customer dissatisfaction. An industry task force convened by the FCC was unable to reach a consensus technical solution to splashing and submitted a Report to the Commission listing various options. A majority of splashed calls arise from the OSPs' inability to bill these calls through Independent telephone companies or the OSPs' inability to validate the AT&T only calling card data.

OSPs also incur unrecoverable costs in access charges, operator and network time, and lost business when they must transfer a call to AT&T. Moreover, many OSPs have installed expensive dialers at customer locations in order to avoid such "splashing." Unfortunately, in order to install these dialers, these carriers must utilize an inferior level of access than that available to AT&T.

Toll Fraud and "Blocking"

A problem related to splashing is the question of call blocking. Three methods exist for caller access to a carrier other than the one presubscribed to the telephone -- 10XXX, 950-XXXX and 1-800-XXX-XXXX. Of all interexchange carriers, OSPA is aware of only one -- AT&T -- which gives callers only the 10XXX option. Unfortunately, the 10XXX method also is the only one which subjects the owner of the telephone to a substantial risk of fraudulent calling. By dialing 10288-0 a caller can reach an AT&T operator and place a properly billed calling card or collect call on AT&T; by dialing 10288-1 a caller can direct dial and the call will be wrongly billed to the owner of the telephone (e.g., the hotel or payphone owner). In the latter event, the telephone owner is responsible for paying the long distance charges. This fraud potential is not present when 950 or 1-800 access is used.

To avoid this vulnerability, many public telephone owners block 10XXX-1 access. Most existing equipment, however, cannot differentiate 10XXX-1 from 10XXX-0. As a result, all 10XXX calling is blocked from such telephones to prevent fraud. Since AT&T does not permit 950-XXX or 1-800 access alternatives, these telephones cannot reach AT&T if not presubscribed to that carrier. All other interexchange companies, however, can be reached. The public misunderstanding of this problem imposes immeasurable public relations costs on AT&T's competitors.

AT&T estimates a cost to it of $50 million to permit 1-800 access to its network and, for that reason, suggests instead that all equipment be modified or replaced if it is unable to distinguish 10XXX-1 from 10XXX-0. The testimony of the hotel industry, however, indicates a cost to hoteliers of $2.3 billion to accomplish this goal.

OSPA believes that AT&T should be ordered to establish 1-800 access immediately. Such action would resolve both the call blocking and call splashing problems for consumers quickly and conveniently.

Conclusion

In summary, AT&T enjoys the following advantages over its competitors:

- substantially lower per-query validation costs;
- superior validation opportunities, including exclusive validation of "AT&T only" cards from the BOC-AT&T shared database;
- reduced losses to fraudulent calling due to superior validation availability;
- lower billing and collection costs; and
- universal billing arrangements with all LFCs, eliminating the need for "splashing" and the incurrence of unrecoverable costs associated with splashing.

The operating costs of competitive operator service providers are substantially higher than those of AT&T due to these many advantages. Those costs include BOC charges for validation, billing and collection services -- essential services which can only be supplied by the BOCs. It appears

that AT&T pays less for these services because of discriminatory arrangements with the BOCs stemming from post-divestiture agreements. OSPA is currently seeking to have this discrimination eliminated in order that AT&T and the OSPs may compete on a level playing field.

Q. What trends do you foresee for your industry over the next year?

A. There is now no question that the public has benefitted from competition in the market for "1+" telecommunications services. Similarly, the emerging competitive opportunities in dial 0 operator services promise to bring innovations to the operator services industry. As the Federal Communications Commission ("FCC") stated in the Report it issued to Congress on May 2, 1988:

> [I]t appears that [operator services] companies are potential sources of new, innovative services for the public, such as bilingual operators and voice messaging services. There is already evidence that AT&T and some Bell Operating Companies have moved to diversify their operator services in response to this competition. Thus, it seems likely that competition in the operator services market can produce consumer benefits which should not be eliminated by regulatory action.[1]

Improvements in AT&T and LEC Services

The dominant supplier responses noted by the FCC involve new offerings targeted at the dial 0 market. For example, AT&T has filed tariffs designed for hotel, hospital and university long distance traffic.[2] AT&T's Holiday Rate Plan,

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[1] Letter from Dennis R. Patrick, Chairman, FCC, to Hon. John D. Dingell, Chairman, House Committee on Energy and Commerce, dated May 2, 1988 at 4.

[2] The Hospitality Network Tariff was approved on June 28, 1988. AT&T Hospitality Network Service, 3 F.C.C. Rcd 4169 (1988). AT&T withdrew its earlier version of the HNS Tariff, which had been designated for investigation into whether it constituted an unlawful rebate of a tariffed charge under Section 203(c) of the Communications Act.

(continued...)

a tariff offering later found unlawful, granted the Holiday Corp., the nation's largest hotel chain, a special discount off AT&T's tariffed services. AT&T also has changed its policies regarding payment of commissions for dial 0 traffic. And recently AT&T announced plans to introduce its own foreign language operator service. Further, three of the RBOCs -- Ameritech, Bell Atlantic and Southwestern Bell -- have proposed to enter the operator services business by becoming involved in the caller's choice of interexchange carrier. Bell Atlantic also began offering a voice messaging service to its coin phone customers.[3] Clearly, the competitive marketplace is having an effect.

The recent introduction of new operator services is particularly dramatic given that the operator services marketplace has been a monopoly for over one hundred years and meaningful competition has developed only in the last two years. Moreover, many of the services brought to market, particularly in the travel and tourism sectors, have been technologically possible for some time. It is clearly the advent of effective billing and collection, and creative competitive entrepreneurship that has made the actual delivery of these services a reality.

New OSP Services

Innovations have already begun to be introduced by competitive service providers. For example, most OSPs offer expanded billing options such as allowing callers to charge their calls to major credit cards and facilitating the ability of hotels to make bill-to-room arrangements. OSP services to hotels, and the consolidated billing arrangements they allow, benefit consumers by facilitating express check-out; creating a single bill with all telephone charges; and eliminating charges for incomplete calls. The 24 hour availability of OSP operators has also relieved hotels and hospitals of the need to retain a night operator. This feature has been especially useful to patients in hospitals

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[2](...continued)
Hospitality Network Service, Order Designating Issues for Investigation, DA 88-255, (rel. Mar. 2, 1988).

[3] Bell Atlantic Request for Waiver of CEI Requirements for Conduct Technical Trials of Coin Telephone Voice Messaging Service, filed April 1, 1988. The waiver was granted by the Commission in September, 1988. The Bell Atlantic Telephone Cos., DA 88-1473, (rel. Sept. 30, 1988).

where the switchboard closes down at night, preventing patients from placing calls from their rooms. The payment of commissions from OSPs also has led to a greater deployment of public telephones, to the convenience of the public.

Many OSPs offer special operator services historically unavailable from AT&T and the LECs, such as foreign language operators. This service is especially useful to hotels that host delegations from foreign nations. Operators can provide concierge services as well. Some operator terminals are able to identify the hotel from which the call originates and operators can provide callers with information concerning matters such as car rentals, restaurant and travel reservations, as well as hotel services in English or a foreign language. And voice messaging service is now available from OSPs, permitting callers who experience a busy signal to leave a recorded message which is forwarded by the OSP's equipment when the receiving line becomes available. Teleconferencing services also are now routinely available.

Competition in OSP services has also lead to increased efficiencies in the provision of telecommunications due to greater automation. Automated "operators-in-a-box," used by hotels and "smart" payphones, are able to process billing information on-site on most calling card calls. Moreover, automated collect calling, recently introduced on smart payphones, reduces the need for a live operator. US Sprint also has announced a new voice recognition system for its calling card customers.

Many further enhancements of operator services spurred by growing competition and consumer needs are in the immediate future. For example, some OSPs are planning to introduce centralized message services and directory assistance services.

Conclusion

Experience has repeatedly confirmed that the public benefits from competition through lower prices and improved services. However, experience has also shown that the transition from monopoly to competition is seldom easy and consumers sometimes suffer from confusion and other ratepayer concerns. Nevertheless, as witnessed by this country's progression from monopoly to competition in "1+" services, once the public is educated, confused customers soon become sophisticated consumers, whose interests are served by decreased prices and more choices. The operator services marketplace will witness an exponential growth in the types and quality of services available if competition is permitted to flourish.

Senator INOUYE. Thank you, Mr. Berg.
Mr. Hines.

STATEMENT OF GERALD A. HINES, DIRECTOR, AT&T CARD/ OPERATOR SERVICES

Mr. HINES. Thank you, Mr. Chairman, Senator.

I also would like, like the others, to have my testimony submitted, and I just will summarize my remarks. And I would like to do that in three different areas. One, just to sort of briefly review what has happened over the last 12 months from an AT&T perspective. And then, two, to narrow in a little bit on this matter of unblocking and the two suggestions that are—or the two areas that are often talked about in the area of unblocking: one, why does not AT&T make 800 access available, and second of all, what are the problems with making 10XXX access available.

For the last 12 months AT&T has been very proactively working to try to solve the matter of unblocking. Even though the complaints that the commissioners receive, the letters that you receive, that the States have received have not been as a result of any of AT&T's practices, we recognized very early on that if any solution was going to materialize, we were going to have to be actively involved. And at that point in time, frankly, we did not preclude any decision or any change in the industry if it would effectively protect the consumers and our customers as well.

But at the time that Congressman Cooper introduced his bill the FCC had just started a number of activities and what materially provided the industry the opportunity to try to solve its own problems, and we were an active participant in that.

Independent of that, we have done a number of things to try to understand what would be involved in the various aspects of unblocking, including doing a very thorough technical evaluation of 800 access in the AT&T network, doing a thorough analysis of what it would take to make 10XXX dialing available from the aggregator locations in a reasonably fraud-free or risk-free environment.

And we have then socialized our findings with a number of the stakeholders in the industry who have a stake in this issue. And as we have worked through all the examinations, AT&T has concluded on its behalf that 800 access is not the panacea that everybody proposes. In fact, from our perspective 800 access is a very expensive solution, given the way our network is currently designed.

That notwithstanding, introducing 800 access in the AT&T network would cause our customers to actually experience a degradation in the service. And that the way that service would have to be initially offered would be on a very manually oriented basis as opposed to the very automated and robust types of services that we make available to our customers today.

And finally—and you will not hear many people talk about this—the belief is that if 800 access were used by AT&T that unblocking is gone, and the fact of the matter is, there are locations that are also blocking the 800 access codes, albeit not as pervasive as 10XXX and not necessarily for the same reasons. But the fact is that 800 blocking is occurring today also, with some expectation

that even if AT&T were to offer 800 access that that practice might also expand.

At the same time we looked extensively at what it would take to cause all forms of unblocking to occur. And by that I mean, Senators, that in the industry today, there are generally four forms of access for calling an operator services.

The prime access, of course, is zero plus, which directs the traffic to the network that has been selected by the property owner, the aggregator. And the three major forms of alternative access: the five-digit 10XXX code that we have talked about, the seven-digit 950 code that has been talked about and the 10-digit 800 code that has been talked about.

And our conclusion is that all three alternate forms of access can be made available so that the carriers who provide services to the consumers can elect to do that in a manner that is convenient, consistent for them in terms of their network design and convenient for them in terms of their relationship with their customers, and that can be done without the dimensions of fraud to any major degree that has been offered as a problem with 10XXX access in particular.

So, as we work through those we have concluded that the correct solution is to make them all available. And it is true that AT&T in its relationship with its consumers, we would prefer that our customers have the option of being able to reach the AT&T network when we are not the primary carrier by dialing 10ATT anywhere that they may travel in the United States. And that is why we support that as a correct solution along with 800 unblocking if carriers choose to use that, and 950 if they choose to use that as their alternate access.

We have made the technical examination in that regard available to a number of parties. We have made it available to the FCC. We have shared that with the American Hotel/Motel Association. We have made that information available to at least one other operator services provider that expressed interest in our finding. And we, of course, would make that available to anyone else.

Senator, we having gone through that analysis and then comparing that to what we see in the Breaux and the Dixon Bills that are before you, we do not see much difference in the bills from an intent or content purpose. The most significant difference—not the only one—but the most significant difference that we see in those bills is the matter of sanctions, which Senator Dixon has included in his bill.

And I guess our feeling regarding those sanctions is that if a carrier intends to comply with the intent of those laws, be it the Breaux version or the Dixon version, that those sanctions will not get in their way of doing business at all. In fact, if a carrier in this industry wanting to provide services in this marketplace intends to comply with the law, then they ought to welcome those sanctions, because in fact it provides them protection as well as the consumer.

As a result, Senator, we have concluded then—and after 12 months of examination of the technical and the various other aspects of the bill—that indeed this legislation would go a long way to providing protection for consumers as well as operator services

providers. And we indeed believe that the bill should be strong and should include the additional provisions that have been included in Senator Dixon's bill.

Thank you, Senator, Mr. Chairman.

[The statement and questions and answers follow:]

STATEMENT OF GERALD HINES, ON BEHALF OF AMERICAN TELEPHONE AND TELEGRAPH CO.

Mr. Chairman and the Subcommittee:

My name is Gerald A. Hines of AT&T. I am the Director responsible for managing AT&T's Card and Operator Services business. This includes most AT&T long distance services utilized by consumers away from home.

I appreciate the opportunity to speak with you today about the away from home marketplace and some of the problems plaguing consumers trying to make operator-assisted and card calls; some of the solutions included in Senator Breaux's Bill; and why AT&T believes that Senator Dixon's Bill will help consumers even more in this quickly growing and often confusing industry.

AT&T has been providing operator services since 1877. The services provided by our operators are often thought of as "traditional" operator services. Several years ago, however, many new companies sprang up and also began to offer operator services. These new operator services providers concentrate their marketing efforts primarily on high volume locations such as hotels, hospitals, universities, airports, and privately-owned public telephones. Owners of these locations typically earn commissions for routing "0+" calls to these operator services providers. AT&T welcomes this competition-and believes that the ultimate beneficiaries of such competition are consumers.

However, the advent of this competition has brought with it some serious problems. I'm sure, if you have not received direct correspondence from your own constituents, you are familiar with typical consumer complaints. For example:

- That the rates of some operator service providers are excessive;
- That consumers often are unaware of which carrier was providing service;
- That consumers using the calling card of one carrier, are having their calls completed and billed by another carrier;
- That consumers reached their preferred carrier only through a transfer which resulted in a call being billed from a location distant from where it actually originated, a practice often referred to as "splashing"; and,
- That consumers are being completely prevented from reaching the carrier of their choice because locations are blocking access to other carriers.

These problems are not new. In fact, complaints about these very issues were cited in the FCC's TRAC Order which was issued a year ago this month. Yet many if not all of these problems still exist today. Thus consumers are still confused and many times unable to make choices about the telecommunications services they wish to use when away from home.

For these reasons, and in these limited circumstances, AT&T recognizes the need for legislation and associated regulation in order to afford relief to consumers who continue to struggle in a confusing marketplace. Senator Breaux's bill goes a long way towards providing such relief by prohibiting blocking and by requiring (a) branding by operators; (b) signage on or near telephones; and (c) the provision of rate information upon the request of any consumer. And Senator Dixon's bill goes a step further.

Today, consumers have choices at home--they can choose a presubscribed carrier for their home telephone, change that choice upon proper notification to their local exchange carrier, and access other carriers at home by dialing the other carrier's access code. They need this choice away from home as well. And Senator Dixon's bill goes an extra step, by not only prohibiting blocking, but also by including the teeth needed to make sure that the policy is actually adopted. The incentive is provided by the prohibition on the payment of commissions and a limitation on operator rates unless blocking is eliminated.

The other operator services providers will argue that they will be unable to comply with this requirement because unblocking will cost too much money. But they have yet to offer compelling evidence that every piece of equipment will need to be replaced at a large cost. Based on research we have completed, AT&T believes that not all equipment needs to be replaced. Many types of PBXs can be upgraded rather than replaced, and a simple piece of adjunct equipment may also be attached to a PBX to allow proper unblocking, again without replacement of existing equipment.

For the past year AT&T has been researching and investigating ways that unblocking can be effected, in particular, on aggregator PBXs. And, we also completed unblocking our own AT&T Card Callers by the end of last year.

We believe that unblocking can be done and can be done today. Consumers demand that unblocking be done at away from home locations which receive commissions from operator services providers. These locations have a

financial incentive to hold consumers captive by blocking access, an objective contrary to consumer interests.

The provision in Senator Dixon's bill prohibiting splashing altogether should not be a problem to the other operator services providers when no commissioned location is blocked. If they are unable or unwilling to handle a particular call, they will be able to tell callers to hang up and access another carrier. And consumers will not be frustrated in their attempts to reach other carriers, because the necessary access will be unblocked. Operator services providers who transfer callers to an operator located near the consumer, not in a distant city, can do so as some are doing today, without the inconvenience or confusion to the consumer that splashing causes.

Finally, contrary to the suggestions of several other providers, the away from home access problem will not be "solved" by the introduction of 800 number access by AT&T. Development of AT&T 800 number access at this time would be extraordinarily expensive, costing an estimated $50 million in operator interface development and up to $250 million in annual operational expenses. It would also provide inferior service to consumers since AT&T's operator systems are designed in such a way that all such calls would have to be handled on a manual basis, thus denying consumers the full range of services which are presently available on a 0+ or 1-0-228-0+ basis. Finally, it would force consumers to learn yet another access code, adding further confusion at a time when we should be making access simpler. The problem is blocking, not AT&T's response to it.

In summary, we believe that the legislation proposed by Senator Dixon will set in motion the final resolution of all the problems now facing away-from-home consumers. Notification will be achieved through branding and signage, and knowledge of rates will be provided upon request under this bill. Splashing, which is confusing to consumers, will be eliminated, and blocking of consumers' access to their choice of carrier will be prohibited in commissioned properties. And, through the participation and cooperation of all industry participants, including the AOS providers and traffic aggregators, consumer confusion can be eliminated.

I again wish to thank you for the opportunity to appear and would be glad to answer any questions.

QUESTIONS OF SENATOR GORTON AND THE ANSWERS THERETO

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Q.1. I informed that under S.1643, AT&T is excluded from the definition of aggregator, and thus exempted from complying with entire sections of the legislation, including the blocking and commission provisions. I also understand that this exact language has been promoted at the state level by AT&T. Is this true? Please explain to me how the public is benefited by exempting your company from this consumer protection provision and any other aspects of your proposed modifications in S.1643.

A.1. An aggregator is typically a hotel, hospital, university, etc. which makes telephone service available to its guests and visitors. Neither AT&T nor an AOS is considered to be an aggregator so there is no "exclusion" of AT&T or any other provider of operator services from the definition in S. 1643.

Unfortunately, you have been misinformed about an AT&T "exemption" from compliance with any section of this bill. AT&T will be required to comply with all sections of the bill pertaining to providers of operator services. Indeed, AT&T has been a leader in the effort to unblock and has already unblocked its 30,000 public telephones. AT&T is also actively branding its calls, providing signage to its aggregators, and providing quotes of rates to customers upon request.

The language in S. 1643 defining aggregators simply replaces overbroad terminology with more precise wording, designed to reach those operating practices most likely to affect consumers. There are major differences between the traditional interexchange carriers who provide operator services as an adjunct to many other services, and the AOSes which are, to a large extent, solely in the business of providing operator and related services.

Like many other interexchange carriers, AT&T serves a great many locations without a specific contractual relationship. Just as you returned a ballot to your local telephone company, and designated your long distance carrier choice for your home, small businesses across the country have chosen one of the interexchange carriers to be their long distance provider. Operator services are also provided by the interexchange carriers at these locations. However, AT&T or any other interexchange carrier chosen at these locations would have no specific business relationship other than providing service per a tariff. As such, there would be no way to identify the location in order to provide information about signage, unblocking, etc.

The AOSes, on the other hand, provide service only where they have a commission contract arrangement. The AOSes should be able to identify and provide information to each and every location they serve since they are all under contract.

Thus, the language in the Dixon Bill, which limits its application to those operating under contract, places consumer safeguards where they are most needed and does not place a burdensome requirement on the interexchange carriers which could never be met. The definition also

excludes from coverage telephones provided on a courtesy basis for customers. Law firms and other businesses generally make phones available in their lobbies and conference rooms for their clients. In these situations, where the caller does not pay for the call, the firm or business should not be deemed an aggregator.

Q.2. Can a company block calls under S. 1643 or can't it? On the one hand, the bill seemingly prohibits call blocking, while on the other the bill allows that if a company does block, commissions or other payments based on the volume of operator assisted traffic must be withheld. Which is it? Who polices this arrangement? Is that who we want to become our enforcement brigade?

A.2. Blocking access to consumers' carriers of choice was declared an unlawful practice by the FCC in its TRAC Order, February 27, 1989. Both versions of the operator services bill simply echo that policy by explicitly prohibiting blocking.

The section of S. 1643 to which you refer, was characterized by me during the hearings as the "sanctions" provided by the bill. This stronger language does provide for an enforcement mechanism. With this language, there is a significant incentive to unblock. Without it, there appears to be no penalty for continuing to block. Non-compliance with this additional provision would require aggregators to forfeit their lucrative commissions.

Since many aggregators and the AOSes which serve them have thus far demonstrated little or no willingness to unblock, despite an FCC Order requiring them to do so, federal legislation needs to have some teeth in it. AT&T believes that S. 1643 has been written in such a way so as to assure compliance with the unblocking requirement.

Q.3. What price do you pay for billing, collection and validation services per call? How does this compare to an AOS company? Do you have any explanation for the apparent discrepancies?

A.3. AT&T receives billing, collection, and validation services by contract or by tariff from a variety of local exchange carriers around the country. As such, we are unable to provide you with a specific aggregated cost per call for these services.

At the interstate level, the FCC has detariffed billing and collection and these services are provided by LECs under contract. As such, AT&T has no knowledge of the prices charged by each local exchange carrier to others such as AOS companies. At the intrastate level, billing and collection rates and charges are generally set forth in the various tariffs filed by the local exchange carriers. This question is more appropriately directed towards these local companies.

As to any alleged "discrepancies", this is an issue about which time and again, the AOS companies have complained to AT&T, but over which AT&T has no control. The local exchange carriers are the only companies which will be able to adequately explain prices, terms, and conditions for services provided and, to demonstrate that such services are provided on a nondiscriminatory basis. We are a customer of the local exchange companies for these services, just as the AOS companies.

Senator INOUYE. Thank you very much, Mr. Hines.
Mr. Bickerstaff.

STATEMENT OF STEVE BICKERSTAFF, EXECUTIVE VICE PRESIDENT, LEGAL AND REGULATORY AFFAIRS, INTERNATIONAL TELECHARGE

Mr. BICKERSTAFF. Mr. Chairman, thank you very much.

My name is Steve Bickerstaff. I appear as the executive vice president of International Telecharge Incorporated, that is, ITI.

ITI is the foremost independent provider of Operator Services in the country. It is a public company traded on the American Stock Exchange. It has presently approximately 2,000 employees and with revenues in 1988 of about $185 million, and in 1989 of somewhere in the neighborhood of $300 million. In other words, I feel that the company I represent is a substantial company, and one which is a major participant on an ongoing basis in the telecommunications market.

There are several points that I would like to make today to clarify some issues that have been raised earlier. One is, I believe that the use of the term AOS is a misnomer. It is important that the members of the committee understand what is occurring in the telecommunications marketplace.

Competitive operator services are merely an extension—and I would urge an inevitable and a natural extension—of competition in interexchange services. What initially involved only a few companies such as ITI two or three years ago now involves every major interexchange carrier in this country. Every one of them (e.g. U.S. Sprint, MCI, Southern Net) is providing operator services in a competitive manner, through contracts with and commissions to traffic aggregator locations across the country. This includes AT&T. AT&T relies on contracts; AT&T relies on commissions. It has done so historically.

What is occurring now is an inevitable development in the telecommunications marketplace, i.e., competition for operator services among all of the companies, not something called "AOS."

The second point I would urge, Senator, is that there have already been substantial benefits and will continue to be substantial benefits from this competition. I do not mean that the road to competition has not been rocky or that there will not continue to be some problems. But there are substantial benefits. In my testimony I have outlined what a number of these benefits are and have been.

What you will find with innovation in this market is that with the passage of time a traveler will be able to access every service from a public phone that he or she can obtain from their home, and services in fact that they cannot obtain from their home and business. This is the direction that competition is taking us, and these innovations are occurring only because there is competition in the operator services marketplace today.

The third point is that certainly the advent of competition has posed problems. Some of those problems are a result of mistakes made by the companies themselves. No question about it. But many of these problems and related complaints are the result of confusion among the general population about what is available

and about changes that are occurring in the whole telecommunications marketplace as a result of divestiture and even pre-divestiture.

I would strongly disagree with some of the comments made earlier that there has not been a material change in the nature and the number of consumer complaints over the last year. There definitely has been a reduction in such complaints as a result of what state regulatory bodies and the FCC have done and changes in the marketplace.

Certainly, ITI has complied with the requirements that have been imposed. ITI has affirmatively addressed the concerns and feels that it has materially affected the level of complaints and the concerns at the state and Federal level.

The third point that I would make is with regard to an impediment that does exist and has continued to exist in the ability to address these concerns. This impedient is the fact that, in my view, AT&T has taken advantage of its dominant position in the telecommunications marketplace over the past year or year and a half to impede the growth of competition by specifically failing to take steps which it could have taken to address the confusion that occurred in the marketplace as this new competition emerged.

Whereas other companies such as ITI have been required to amend their contracts with every location to prohibit blocking, AT&T, which historically has had a role in blocking access from locations served by AT&T, has not amended its contracts to prohibit blockage. All of its competitors—or at least ITI—have done so and are required to do so. AT&T has not.

Therefore, if you are a location owner and you choose to enter into a contract for a commission with AT&T you can block 10XXX access, you can block 950 access, you could possibly block 1-800 access, because AT&T does not prohibit you from doing so. If you do business with ITI, you cannot. Our contract requires that blocking not occur.

Second, AT&T could have addressed the problem and confusion by providing 1-800 access to everyone so that it was universally available. They elected for business reasons not to do so. That decision has contributed materially to the confusion in the marketplace.

In addition, the confusion over rates has been, in my opinion, largely due to a failure of AT&T to explain or acknowledge that when a person compares the rates of another company with those of AT&T, they may incorrectly assume that the particular rate of AT&T for that call is cost based. In fact, it is not. Not necessarily even for AT&T is each rate cost based.

So, for these and other reasons. I believe AT&T has contributed in a major way to the confusion that has existed in the marketplace.

In conclusion, Mr. Chairman, I would commend Senator Breaux and the sponsors on this committee of the Breaux legislation. The legislation as it emerged from the House was a result of, I think, a very careful study and an effort in the House to produce legislation that would address these issues in a reasonable and fair manner.

The concern I have about the changes that are proposed by Senator Dixon are that in my personal opinion they create a gap or a

hole in the consumer protections that this committee and this Congress intend to impose and that they operate very specifically for the advantage of a single competitor in the operator services marketplace, and that carrier is AT&T.

I appreciate the opportunity, Mr. Chairman. I hope that by questions I can address some of the issues that you raised earlier.

Thank you.

[The statement and questions and answers follow:]

Statement of Steve Bickerstaff
Executive Vice President of Legal and Regulatory Affairs
International Telecharge, Inc.
before the
Communication Subcommittee of the Committee on Commerce, Science and Transportation of the United States Senate

Chairman Inouye, Members of the Subcommittee:

My name is Steve Bickerstaff. I am the Executive Vice President of Legal and Regulatory Affairs for International Telecharge, Inc. I appear today pursuant to your invitation to address legislation now pending before this Subcommittee which would impose restrictions on the operations of certain operator service providers. Thank you for the opportunity to testify.

I have been a practicing attorney for approximately eighteen years. For the past ten years, a major portion of my practice has been on behalf of telecommunications companies, including ones of virtually every size and offering every variety of service. My law firm assisted as regulatory counsel in the formative stages of International Telecharge, Inc. (ITI). In the spring of 1989, I was asked by the Board of Directors of the Company to take a leave of absence from my firm to serve as the chief legal officer of ITI. It has been my pleasure to serve in this position since May of 1989. A brief biographical outline is included with my testimony. (Appendix A).

The purposes of my testimony today are as follows:

1. To provide information regarding ITI and the services it makes available to the general public;

2. To describe what, in my experience, have been the benefits of competition in the telecommunications market in general and, in regard to operator services, in particular;
3. To respond to the concerns which have prompted this legislation; and
4. To specifically address the merits of S. 1643 and S. 1660.

I will be pleased to answer any questions.

I. Summary of Testimony

Competition in the telecommunications market has brought substantial benefits to the general public. The provision of operator services is a necessary extension of competition among interexchange carriers. Virtually all major interexchange carriers now are providing operator services to their presubscribed customers and to callers at traffic aggregator locations, such as hotels, motels, universities, payphones, etc. Competition in operator services already has produced benefits for the general public and will continue to do so.

The advent of significant competition in operator services prompted complaints from some telephone users who claimed to have been charged exorbitant rates, to have received bills for calls from cities where they had not been present, and not to have known that a carrier other than AT&T was providing their service. To a large extent, these complaints have resulted from confusion among

the calling public about operator services in general and have been similar to complaints that accompanied the first stages of competition in other aspects of telecommunications services. Although some rates charged by some operator service providers in the past have been higher than the caller expected, claims of exorbitant rates often reflect a tendency to compare charges for a call to the rates of a single carrier (AT&T) without regard to whether the particular rates are reflective of the reasonable, nondiscriminatory cost of providing the service.

AT&T continues to enjoy many cost and processing advantages by virtue of its past and present relationship with the local exchange companies (LECs) which ITI and other interexchange carriers are denied. AT&T has priced certain of its operator services in a manner that causes unnecessary confusion among callers and, when such prices are used as a standard or cap for the rates of its competition, an unlawful, anticompetitive situation results. AT&T has not taken the steps available to it to address the confusion and concerns of the general public regarding competitive operator services. Instead, AT&T, and certain Bell Operating Companies (BOCs), have appeared at times to initiate or to unnecessarily aggravate this confusion and concern.

ITI supports S. 1660, introduced by Senator John Breaux. Although ITI believes that legislation is unnecessary, the Breaux bill reflects a consensus that evolved after considerable study and effort in the House of Representatives. On the other hand, S. 1643 contains substantial changes from the Breaux bill which, in

my opinion, have the effect of primarily benefiting one interexchange carrier to the detriment of the general public.

II. International Telecharge, Inc.

International Telecharge, Inc., is a provider of operator-assisted and informational services to callers primarily from payphones, hotels, hospitals, colleges and universities and mobile and cellular telephones. The Company also provides these services by contract to other interexchange carriers which, in turn, provide the services to both presubscribed customers and callers at traffic aggregator locations. ITI processed its first operator assisted call in September, 1985. It now has approximately 2,000 employees, including 1,400 operators. The Company's revenues for 1988 totaled $184.2 million. Revenues through the third quarter of 1989 totaled $206.5 million. ITI is publicly owned and is traded on the American Stock Exchange and its headquarters are located in Dallas, Texas. The Company's network is nationwide, utilizing five switches in five states. At the present time, ITI originates long distance calls on an interstate basis in all fifty states and the District of Columbia, as well as 35 foreign countries. The Company is authorized to provide intrastate services in 39 states, with applications pending in three others. The remaining eight states are single LATA states in which intrastate competition is prohibited or ITI has no immediate plans to seek certification. ITI presently processes 10-12 million calls per month.

A more detailed description of ITI and the services it presently offers is included with this testimony as Appendix B.

III. Benefits of Competition

The concept of free and fair competition among companies is basic to the economic and political structure of this country. At the same time, however, it often is difficult to recognize the overall benefits of such competition when a person's attention is constantly being drawn to numerous individual experiences or complaints prompted by dissatisfaction with the services, products or costs associated with such competition. In dealing with the controversy over competition in telecommunications, I constantly am reminded of the adage about the person standing in the middle of a swamp who is up to his waist in mud, is being attacked by insects, and is threatened by alligators, and who has difficulty recalling why he was trying to drain the swamp in the first place. The benefits of draining the swamp are very real, but the discomfort associated with achieving that result also is very real.

When confronted by the controversy surrounding competitive operator services, many persons fail to recognize that telecommunications services only began to become competitive in recent years. Some areas, such as interexchange services, were still a total monopoly in many states only four years ago. Some aspects of interexchange services and virtually all local exchange and related services remain monopolies today. Other areas remain dominated by a single company even though competition ostensibly

is permitted. Yet, the continuing and, I believe, unavoidable surge is toward fuller competition in all markets and for all services.

Technological advancement is the relentless driving force behind such competition. Competition for operator and information services is merely one small step along the way. The controversy surrounding competitive operator services over the past 12 to 18 months is similar to the controversy occasioned in the past by competition in other areas of the telecommunications marketplace. This controversy already is subsiding as regulatory agencies and the market itself have functioned to better inform the general public and to address consumer concerns.

One example of the effects of competition in telecommunications is customer premises equipment. Until approximately twenty years ago, it was thought to be unlawful in this country for anyone to connect any equipment to a phone line that had not been furnished by the telephone company. AT&T fought vigorously to enforce this requirement. Even as recently as 1975, the FCC was still wrestling with whether tariffs submitted by the telephone companies requiring the use of company supplied connecting arrangements were reasonable. It is difficult for many of us to envision what it would be like today if the only equipment that a person could connect to his phone line was what the telephone company furnished. Once the customer premises equipment market was opened to competition, there was an explosion of new products and services. Certainly some of these (e.g. poorly

manufactured phone sets) produced consumer complaints and continue to do so today. But the overwhelming effect of competition in this market has been to produce a myriad of new and enhanced alternatives in customer premises equipment, including sophisticated PBX systems and computers. None of the "public harms" urged 10 to 20 years ago by AT&T in defense of its monopoly have emerged. Instead, this country and its citizens have enjoyed and continue to enjoy very substantial and identifiable benefits which are attributable to competition in this part of the telecommunications market.

The experience of this country regarding the provision of interexchange (intercity) services also provides an example of what happens when competition occurs. As with customer premises equipment, only AT&T (and Western Union) in the past was entitled to provide intercity or long distance transmission services. AT&T vigorously resisted any intrusion on its monopoly. But, again as with customer premises equipment, technology destroyed what had been perceived as a natural monopoly. In 1959, the FCC recognized the right of companies to construct and operate microwave networks for their own use. In 1969, by a narrow four to three vote, the FCC authorized a new company, Microwave Communications, Inc. (MCI), to construct and operate a microwave system to provide a specialized voice and data transmission service to subscribers.

In subsequent years, the FCC gradually established and began to enforce a policy that permitted new entrants into various aspects of the intercity market (e.g. satellite carriers) and

required local exchange companies to provide carriers with reasonable interconnection services. AT&T and most local exchange carriers fought the possibility of intercity competition by arguing that retention of a monopoly was in the public interest because these new competitors would cause a degradation of quality in the telephone system and would cause financial harm to the established telephone companies. Such resistance to intercity competition continued through the 1970's and into the 1980's. Even today, battles continue to be fought in several states over the right to intercity competition on an intrastate and intraLATA basis. As recently as three years ago, I was personally involved in proceedings where US Sprint and MCI were still confronting an attitude among state regulators where they were derided as "cream skimmers".

Competition in intercity transmission services has been plagued by company mistakes and by problems such as "billing nightmares", "reseller pyramid schemes", and questionable sales tactics that have prompted consumer complaints. Yet, few informed people today would question that competition has brought significant and identifiable consumer benefits in terms of lower prices, more alternatives for selection by the public, and new and beneficial customer services. Rather than degrading the general quality of transmission services as warned by AT&T, competition has prompted the development and expanded use of new and improved technology beginning with microwave, then digital microwave and, now, fiber optics, with new improvements occurring constantly. Not

only has the competition introduced these advances, but, as occurs in a competitive environment, the presence of competition has required AT&T and, to a lesser extent, local exchange companies to respond with similar improvements in their services.

I believe that competition has proven to be ultimately beneficial in all aspects of the telecommunications market in which it has emerged. These benefits always have come despite the protests and severe warnings of AT&T, and the concerns of regulators that competition would be detrimental. In each instance, it has taken time for the benefits to fully emerge. Public recognition of those benefits has lagged even further behind, with many persons even today at least expressing a general and ill defined longing for the "good ole days" when there was only one telephone company providing all services. Furthermore, the path to these benefits often has been bumpy, with shoddy products and practices occasionally causing consumer outcry. The experience of the past two years regarding competitive operator services has been no different.

It is important that this Subcommittee, and Congress, recognize that operator services are merely one of many aspects of telecommunications that have become or are now becoming competitive. The same or similar mistakes and problems that occurred in these other areas have occurred with operator services. But, as occurred in the other areas, the problems gradually are being sorted out and the benefits are beginning to emerge.

IV. Competitive Operator Services

There is nothing materially different about how an operator assisted call is transmitted as compared to any other intercity call. Appendix C is a simplified transmission pattern showing how both 0 and 1+ calls originate in the same manner from a location and are carried and terminated over the same network. All carriers, including AT&T, provide service to traffic aggregator locations through contracts with the location or equipment owner which provide commissions, discounts, and other marketing incentives. An interexchange carrier may contract to provide only 1+ or only 0 service to a location, or to provide both services (and other private line or specialized services) to the same location. The caller initiates both types of call in the same fashion, by dialing a specific digit or digits (e.g. 1, 0, 9-1, 8-1, 9-0, 8-0, etc.).

The need for operator services arises most often at locations where the premises and telephone equipment being used does not belong to the caller. Under such circumstances a 1+ call would be charged to the account for the premises or equipment from which the call is made. The function of the operator is to obtain sufficient information from the caller to permit the call to be billed to the appropriate account. This function may be performed by an automated system or by a live operator and may occur at many different places during transmission of the call. For example, the information may be collected by an operator or by customer premises equipment (e.g. PBX, "smart" payphone) at the location itself to

permit billing to a particular room or to a calling card, credit card, third number, or to obtain appropriate rates for coin sent calls. The information may be gathered through capability at the interexchange carrier's switch by use of automated systems that advise the caller how to provide the necessary billing information. For calls requiring a live operator or to access other automated capabilities, interexchange carriers may utilize a "drop-link" to the location of the operator center, with the link terminated once the billing information is obtained. In some instances, the call may go directly to the operator center.

The number and location of operator centers nationwide varies by particular interexchange carrier with some carriers relying on a single center, others utilizing several regional centers and some interexchange carriers contracting with other companies to provide the operator function. It is common, even for local exchange carriers, to rely on centralized operator centers which frequently are remote from the place of origination of the call.

Although only another aspect of the provision of interexchange services, competition in operator services lagged behind the growth of competition in private line and 1+ switched services. Most interexchange carriers have utilized some operator capability in the past primarily to serve their presubscribed customers while traveling. To be available nationwide, however, interexchange carriers were required to use costly 800 services, usually acquired from AT&T. As a result, charges for a call made using these

"travel services" often were higher than for the same call if it had been made over AT&T.

In my opinion, several factors initially discouraged competition against AT&T for payphones, hotels, etc., and left interexchange carriers to focus on competition for 1+ presubscription. First, as mentioned above, reliance on AT&T's 800 service for access to a carrier's network was expensive and inefficient. Only with the increased availability of equal access on a nationwide basis did an operator network become economically feasible.

A second reason was that the technology necessary for efficient handling of operator assisted calls generally was not available initially outside of the Bell and independent telephone company systems. Even the technology utilized by these companies did not immediately lend itself to use by interexchange carriers other than AT&T. Therefore, it became necessary to develop new technological capability for identifying, processing and billing calls requiring operator assistance. ITI, through the foresight of its founder Ray Miller, played a major role in the development of this technology, which took the form of changes in customer premises equipment as well as operator work stations, switching, billing and emergency calling capabilities. As in the other areas of competition, the development of this new, and in many ways improved, technological capability provided the basis for and, probably, the inevitability of competition.

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A third and major factor initially discouraging competition in operator services was the lack of a ubiquitous billing method. A ubiquitous system existed for the Bell System and, after divestiture, for AT&T and the Bell Operating Companies in the form of the local telephone number of each subscriber and the personal identification numbers issued to subscribers on Bell calling cards. Even after divestiture, AT&T remained the sole interexchange carrier permitted by the BOCs and other local exchange carriers to bill calls to the local telephone number or subscriber account number of the LEC's subscribers and to provide long distance service from public and semi-public telephones owned by the BOCs and by AT&T. The unlawfulness of this situation was apparent to many persons and was the basis for motions filed before Judge Harold Greene. Although Judge Greene did not rule on these motions until 1988, the BOCs gradually and, in many instances, grudgingly conceded during 1987 and 1988 the need to permit interexchange carriers, in addition to AT&T, to utilize the BOC data base and systems to validate a subscriber account number or local telephone number and to bill the call to the subscriber's account through the BOC billing system. Again, ITI played a major role in this development as it bargained, battered, and cajoled the BOCs into validation and billing and collection agreements at a time when other interexchange carriers were not yet doing so.

The watershed for competition in operator services came in October, 1988 when Judge Greene found that the prior BOC practices of denying validation and billing and collection services to

companies other than AT&T was violative of the Modified Final Judgment (MFJ). Judge Greene further ruled that it was violative of the MFJ for AT&T to remain the sole presubscribed carrier for telephones owned by the BOCs (i.e. "public payphones"). Judge Greene directly set in motion a process which resulted in the balloting and presubscription of approximately 1.7 million BOC-owned payphones nationwide, representing approximately $2.6 billion annually in long distance revenue. His ruling indirectly set in motion changes which produced increased and expanded competition for other locations (i.e. hotels, universities, etc.) requiring operator assisted services. Interexchange carriers, such as MCI and US Sprint, which prior to Judge Greene's ruling had refrained from developing extensive operator service capability, moved quickly to secure such capability for the public payphone presubscription process. Once a commitment to operator service capability occurred, the marketing of these services to other locations (i.e. hotels, private payphones, universities) was inevitable and quick to follow. AT&T's monopoly at such locations has begun to wane. Some sources believe the operator assistance market in 1990 will total $13.3 billion.

Consumer confusion and complaints have occurred as a result of the development of competition in operator services. Some of this confusion was inevitable as persons encountered for the first time a major change in the way in which they carried on business, particularly in an area already as full of turmoil as telecommunications. This inevitable confusion was aggravated,

however, by the general complexity of operator services. To some extent, consumer confusion and complaints resulted from the complexity of the technology and from mistakes made by the new companies or in provision of the new services. As occurred in the 1+ area, carriers providing operator services experienced billing and marketing problems that caused consumers to complain about late or inaccurate bills, charges for incomplete calls, poor quality of service, and unauthorized changes from one presubscribed carrier to another. Certainly ITI believes it has effectively met each of these concerns.

Two sources of consumer concern would appear to have been more prevalent in the initial stages of competitive operator services than in 1+ competition. One such concern was reflected in consumer complaints about the level of charges imposed by some companies for operator services. A second concern was reflected in consumer complaints about confusion over which interexchange carrier was providing the operator services or transmission for the call. As discussed elsewhere, these problems, to a major extent, are the result of incorrect assumptions by the caller in regarding who has a right to carry the calling question and what constitutes a reasonable charge for the call. Again, however, ITI believes these concerns also are being addressed. ITI's intrastate rates generally are equivalent to those of AT&T or one of the other interexchange carriers. ITI's average charge for an interstate call declined almost 20% in 1989.

State and federal regulatory bodies have adopted requirements to address consumer concerns. The FCC has briefed this Committee on the operator service requirements adopted by the FCC in February of 1989 so I will not repeat the specifics of that order. Most state commissions have adopted restrictions which vary somewhat from state to state, but generally are intended to address the same concerns as the FCC order.

In both state and federal proceedings, ITI has supported standards for operator services which would protect consumers. Since beginning operations in 1985, ITI has identified itself (i.e. "branded") at the initiation of each call and again before termination of the call. ITI has not "splashed" calls to AT&T but instead has relied on a process called "tone repeat" that accesses the LEC network at the originating location and avoids any misbilling. ITI has not itself blocked access to other interexchange carriers or required its subscribers to do so. In addition, ITI utilizes one of the most sophisticated rate quote systems available. During the past year, ITI has taken specific steps to identify and to achieve compliance with state and federal restrictions, including the creation of a compliance function within the Company headed by an Executive Vice President. These steps are summarized in Appendix D. ITI also has been instrumental in the formation of the Operator Service Providers Of America (OSPA) and the adoption by that Association of a code of conduct for all member companies.

In supporting reasonable regulation, ITI has followed three principal guidelines. The first is that the marketplace itself ultimately will eliminate any need for regulation. Second, if regulation is to exist, all restrictions must be uniformly applicable and enforced against all competitors in the marketplace, including AT&T and the local exchange companies. Third, it is inappropriate and unlawful to attempt to determine what constitutes a reasonable rate for a service by fixing the charge for that specific service according to the rates of another carrier, particularly when the other carrier is the dominant competitor in the market and the rates in question bear little or no relationship to the specific service related costs of any carrier.

I believe, however, as indicated later in my testimony, that many of the problems associated with competition in operator services can be attributed to the policies and decisions of the dominant carrier, AT&T, and to certain LECs.

The past year has seen what ITI believes is a material reduction in the level and significance of consumer complaints. For example, the level of complaints regarding ITI has decreased from .0012% of calls processed in January of 1989 to .0006% in December of 1989. We have seen a significant reduction in the incidence of complaints for billing of incomplete calls, denial of knowledge that ITI carried the call, and claims that the caller thought he or she was using AT&T. This decline in complaints reflects many factors, including ITI's compliance efforts, better

consumer understanding of the issues, and pressures within the marketplace.

This same trend toward fewer and less significant complaints, can be seen at the state level where, with only a few exceptions, state commissions have recognized the right of companies to compete to provide operator services and the number and significance of complaints are declining in proportion to the number of calls being carried by companies other than AT&T.

V. Innovations in Operator Services

As occurred in other areas of telecommunications, competition in operator services has produced significant identifiable benefits for the general public. To some extent they are addressed in Appendix B, but specifically include:

1. Improved Operator Services Technology

The development of new advanced state-of-the-art technology for operator services has caused both the historical operator service providers (i.e. AT&T and the LECs) and regulatory bodies to examine the adequacy of existing operator systems and practices. One example of such advancements is ITI's system for handling emergency calls, which permits instantaneous identification and connection with the nearest source of emergency assistance for the caller. Other examples include various software, hardware, and computer protocol enhancements that have significantly advanced capabilities in areas such as customer specific service offerings and billing capability.

2. New Services

New services have become possible which have been unavailable or only partially available in the past from the historical operator service providers. Among these new services are:

Message Forwarding

Multilingual Operators

New billing options, such as major credit cards

Mobile Marine Services

Originating Number Specific Service and Billing Options

Voice Recognition Systems

As competitors have developed these capabilities, AT&T has responded by beginning to provide some similar services. This is the way competition may be expected to benefit consumers.

3. Information Services for the Traveler

The availability at traffic aggregator locations of services otherwise available only at the caller's presubscribed number is another recent innovation. This area is one likely to experience considerable expansion in the near future as information services (e.g. weather, stock market, sports, entertainment, etc.) become available for the first time to travelers using public telephones. Competition to furnish these services to the traveling public is likely to spur both the availability and use of information service providers.

4. Lower Rates

While much of the focus of the controversy over operator services has been on claims of exorbitant rates, some companies have offered billing options that resulted in rates lower than those of AT&T. Moreover, in several states, the level of operator surcharges among companies other than AT&T has been driven downward.

The ability of an operator service provider to accept billing information from a person any time at any telephone makes it theoretically possible for a traveler to obtain a virtually unlimited assortment of services wherever the person may be. The effective limit of available services is likely, in my opinion, to be determined primarily by the extent to which competition is permitted and encouraged in this part of the telecommunications market. The historical operator service providers have shown little or no inclination in the past for substantial advances in services at transient locations. Competition from telephone equipment companies and interexchange carriers prompted new service offerings (e.g. call waiting, call forwarding, etc.) at businesses and residences. Only competition in operator assistance will bring similar advances at public locations.

VI. AT&T's Role In Problems Occurring In Operator Services

In the midst of the controversy over "AOS", little or no attention has been given to how AT&T's business and policy decisions have contributed to the real and perceived problems that exist for consumers.

A. Discriminatory Costs For AT&T Competitors

Insofar as operator service companies have charged and continue to charge rates higher than those of AT&T for certain calls, much of the reason lies in the disparity between AT&T and its competitors in the cost of certain essential services provided by the LECs. A carrier's ability to validate caller telephone numbers and subscriber account numbers and to bill and collect through the LEC are essential to the provision of operator services. As a result of agreements reached as a part of divestiture, AT&T pays materially less for these services than its competitors. While specific prices often are proprietary or difficult to compute, a comparison of ITI's costs and those which apparently exist for AT&T and the LECs are instructive:

	ITI	AT&T	BOC/LEC
Billing and Collection	Up to $.90	$0.05 -$0.10	$0.01-$0.02
Validation Cost	$0.085-$0.125	$0.005-$0.015	$0.00177

ITI believes this disparity in costs is unlawfully discriminatory, but, as has been the case with all changes in the telecommunications market, a legal determination of such unlawfulness takes time and has been resisted vigorously by AT&T and the affected LECs. Still, as ITI's experience has shown, charges by the BOCs for billing and collection have varied from $.02 per message by one BOC to approximately $.35 by another. The prices charged to ITI by the LECs are not cost based and operate

unfairly to inflate the cost of doing business for AT&T's operator service competitors. For example, some LECs are earning as much as a 300% rate of return on their intrastate billing and collection services at the expense of companies such as ITI and to the detriment of the calling public.

Companies other than AT&T face other cost differences that arise from the advantages enjoyed by AT&T as a result of divestiture. One example is the need by carriers other than AT&T to rely on 800 access when AT&T has a nationwide access network through the LECs.

B. Discriminatory Services For AT&T Competitors

Much controversy surrounds whether or not the LECs are providing equal interconnection services for AT&T's competitors. Many of these inequities affect both 1+ and dial 0 services. But other differences materially affect the ability of companies, other than AT&T, to compete in the operator services market. For example, AT&T submits its billings to a single central location for dissemination to and billing by all telephone companies. ITI, and other competitors, may use this central location only to bill to BOC accounts. Separate billing and collection agreements must be secured and separate files provided for billing through independent telephone companies. Even within the Bell System, AT&T bills are processed differently than those of other carriers.

As a result of intensive efforts over three years, ITI has secured several different sources through which it now can bill to the accounts for 584 independent telephone companies. This

capability probably exceeds any interexchange carrier other than AT&T. Still, ITI has been unable to obtain validation or billing agreements at all from many small independent local telephone companies, and has secured others only by offering to pay outrageous charges, such as $.85 per message for billing and collection. Certain independent local telephone companies continue to oppose efforts before the FCC to require that services be made available on an equal basis to all interexchange carriers.

C. AT&T Pricing Policy

Generally the perception that a competitive operator service provider's rates are too high is based on comparison with the charge that AT&T or the LEC would impose for a similar call. Not only is this comparison inappropriate because of the difference in carrier costs, as discussed above, it incorrectly assumes that the AT&T or the LEC operator service rate for the call covers the cost of that particular carrier of the operator assisted transaction.

Disparate pricing in AT&T's comparison of calling card interstate operator assistance rates is exemplified when comparing AT&T's reduced surcharge for calling card calls to its operator surcharges for other forms of operator assistance:

	AT&T Interstate Operator Surcharges
Calling Card	$0.80
Station to Station	$1.75
Person to Person	$3.50
Real Time Rated (e.g. Hotel Billed to Room, 1+ from payphone)	$1.75

The explanation for this difference in pricing is that AT&T wishes to encourage persons to use their calling card for 0+ calls, which can be handled by an automated instead of live operator. While this rationale initially seems reasonable, a decision by a dominant carrier to underprice certain services to encourage their use should not be unilaterally required of other companies, whose cost structure is significantly higher. The $.80 calling card rate does not even cover the Billing and Collection cost for some calls billed by ITI to certain LECs, which, as I previously described, can exceed $.90. In addition, validation costs range between $.085 and $.125 per query and can average up to $.23 per billed call. Thus, it can cost a competitive carrier as much as $1.13 to validate and bill a call. Additional cost such as operator time, capital investment, and administrative expense have not even entered the equation, and, under this scenario, could not be recouped by the company through its charges for operator assistance.

Posing a question about the purpose behind the lower calling card rate is that AT&T continues to impose a much higher (i.e. $1.75) surcharge for 1+ interstate calls from public payphone where the caller deposits coins to cover the requisite rate and charges even though these calls are handled by an automated operator (i.e. "please deposit $2.50 for three minutes"). A significant aspect of this practice is that only AT&T and the BOCs can furnish 1+ services from such telephones. In effect, AT&T (on an interLATA basis) and the BOCs (on an intraLATA basis) are charging one

operator assistance rate for automated service which only AT&T and BOCs can furnish, while charging a significantly lower operator assistance rate for services which are provided competitively by other carriers, even though, in the latter instance, substantial validation and billing and collection costs exist that are not present for the sent-paid 1+ calls. ITI believes that this pricing disparity reflects a cross subsidization between a monopoly service and a competitive one.

It is questionable whether the operator service charges tariffed by AT&T at the interstate level even permit a reasonable recovery of costs for at least a certain amount of that carrier's operator services. However, even more extreme, differences exist in the amount of AT&T's rates at the intrastate level. The overall unreasonableness of these rates is shown below:

	AT&T Interstate Rate	Lowest AT&T Intrastate Rate
Station to Station	$1.75	$.80
Calling Card	$0.80	$.24

In each instance the function being performed by the automated or live operator is the same. In fact, one call processed by an operator may be interstate and the next one processed by that same operator may be intrastate, yet the charge for the operator's handling of the call varies by as much as 350%. In some states, AT&T charges materially less than the BOC for the same operator service function.

The effect of this lack of cost-based rates for AT&T operator services, particularly at the intrastate level, not only causes caller confusion and complaints about the rates of AT&T's competitors, but to the extent that AT&T's rates become an official or unofficial standard by which regulators fix the rates of its competitors, the effect is clearly unlawful and anticompetitive.

D. Splashing

Many consumers have been inconvenienced and confused by the receipt from AT&T of bills which show and rate a call from a location other than the one from which the call was made. This result occurs when a carrier transfers a call to AT&T at a location, such as an operator center, that is different than the actual location of the caller. As indicated earlier, ITI does not "splash" calls and did not do so even before the FCC criticized such practices. ITI recognizes, however, that the problem is one requiring remedy. Unfortunately an outright prohibition of transfers between carriers is unrealistic in the short term and unwise in the long one. The ultimate solution must lie in a cooperative effort among carriers to assure that a caller can be transferred when necessary without inconvenience or confusion. AT&T's participation in finding such a solution is essential. AT&T has cited numerous reasons, including expense and technical problems, as a basis for objecting to any form of transfer of a call from other operator services companies. In reality, most of these issues could be addressed on at least a partial basis without major difficulty. Unfortunately, there presently is no

incentive for AT&T to cooperate with its competitors in resolving this problem since the controversy over incorrect billing of calls as a result of splashing has been attributed almost entirely to its competitors.

E. Carrier Refusal To Accept Calling Card Number

It is a misstatement to speak about an operator services provider "accepting a calling card." In reality no card actually is used in the provisioning of the call. Instead, the caller inputs his or her LEC subscriber account number, which usually consists of a ten digit telephone number and a four digit personal identification number which permits a carrier to identify the caller's account, to validate the number being used, and to bill the charge for the call to a known account. The number itself may appear on a "calling card" issued by AT&T, but it also may be on a card issued by a BOC or an independent telephone company, or may be on a piece of paper, or simply recalled from the memory of the caller.

In some instances, persons attempting to make calls from telephones served by companies other than AT&T have had their numbers rejected as "invalid." There are several reasons why this may occur. The refusal of some independent telephone companies to make their subscriber numbers available for validation and billing forces some operator service companies to reject those numbers since no viable alternative means exists for validating the billing information or actually billing the charge for the call. A single central validation system or, at least, uniform availability of

subscriber account numbers from independent telephone companies would address this problem.

An "invalid" indication also can be obtained when a caller uses a subscriber number that is not accessible through the LEC to any carrier other than AT&T. As a result, the carrier refuses to place the call charged to the number because no validation or billing capability exists. Some callers are understandably upset by this indication that their numbers are invalid and perceive that the particular operator services provider is responsible.

The problem also could be resolved if the LEC determined to make all subscriber numbers available. Each LEC subscriber's account number should be subject to validation by all carriers and, therefore, usable at all locations. The problem could also be resolved if AT&T would agree to permit other carriers to accept these subscriber numbers, possibly in return for some agreement on other matters. Several carriers have explicitly asked AT&T for such an agreement, but without success. The loser is the caller who is ready and willing to use the presubscribed carrier from a location but cannot do so because his subscriber account number is available only to AT&T.

F. Blocking of Access To Other Carriers

One of the most visible issues aggravating consumers concerning competitive operator services is the perception that operator services providers are purposefully denying the caller access to a particular carrier, such as AT&T. Sometimes this issue arises in the context of the refusal of a company to "splash" the

call to AT&T, as discussed in Section VI. (D), or the inability of the carrier to accept a subscriber number that appears on an AT&T calling card, as discussed in a Section VI. (E). More often, however, the issue of "blocking" occurs when a caller finds that his or her ability to reach a particular carrier through 1-800, 950 or 10XXX access is impaired.

An inability to access a carrier from a particular location through 800, 950, or 10XXX is a function of the customer premises equipment. The equipment may lack the capability of providing such access, or the equipment may have been modified or programmed to block one or all of these access methods.

Three important points should be recognized regarding blocking. First, the decision to block access to carriers other than the one selected by the premises or equipment owner generally is within the control of the premises or equipment owner, not the interexchange carrier serving the location. The FCC's February, 1989 Order prohibits operator services providers from blocking and requires them to amend their contracts to prohibit their subscribers from blocking. ITI has complied with the order.

The second point is that the practice of restricting access available through customer premises equipment has existed long before competition began in operator services. Locations such as hotels, motels, universities, hospitals, payphones, offices, etc. for many reasons long have chosen to prevent guests or others from using the location's telephone equipment to make certain types of calls or to use any carrier for 1+ or dial 0 calls other than the

one selected by the owner. Many practical and economic interests historically have affected this decision.

The third point is that locations (i.e. hotels, universities, payphones) served by AT&T often block 950 and 10XXX access to other carriers. In fact, at least until late in 1989, some public telephones owned by AT&T itself continued to block all or part of 800, 950 and 10XXX access to other carriers. Moreover, at least some of AT&T's private payphone contracts only require the payphone owner to permit 800 access, not 950 or 10XXX.

Blocking occurs for many reason. Some blocking is inadvertent and occurs because the customer premisses equipment in use at the location lacks the capability of accepting certain access methods. Some locations block 10XXX because of the risk of fraud due to a lack of 10XXX1 screening. A location owner can be charged for a call made over this telephone equipment using 10XXX1 and can be unable to identify who made the call. If 10XXX1 screening is unavailable, the only means by which to block 10XXX1 calls is by also blocking 10XXX0. A third reason for blocking occurs in some rural areas where LEC central office equipment lacks the capability of providing 10XXX access.

At some locations, however, the decision to block is made for economic reasons. Testimony recently offered in a state proceeding on behalf of a state university using AT&T as its 1+ and 0+ carrier emphasized that blocking of 950 and 10XXX was designed to require students to use only the university's carrier, thereby increasing the discount available to the school on its long distance service

and increasing the margin on its charge to the student. The university representative indicated that it was not presently paid a commission on operator calls but was "working on" getting such an agreement from AT&T in addition to the discount available from the carrier for the minutes of use attributable to operator assisted calls.

The issue of blocking affects many interests. On the one hand is the desire to assure each person a means to access his or her carrier. On the other hand is the right of a property owner to control use of his or her property and equipment. A fundamental principle of telecommunications law has been the right of a private person to use his or her telephone equipment in a manner that is privately beneficial as long as it is not publicly detrimental. A strict interpretation of a blocking prohibition could adversely impact many location owners and equipment owners and manufactures and could have other unintended effects, such as diminishing the widespread presence of telephones available to the traveling public. Property and equipment holders should not be expected to bear the expense of replacing or modifying existing equipment, or to assume a risk of fraud merely to provide a redundant access method (10XXX) for all interexchange carriers, except AT&T for which it is the only access method, since AT&T does not make, for example, an 800 type access number available to its traveling customers.

The primary obstacle to resolution of the blocking problem lies in AT&T's decision to only provide 10XXX access to its

network. It is this business decision by AT&T that creates the potential need for location and equipment owners to expend funds to modify or replace their own customer premises equipment merely to accommodate the business decision of a single interexchange carrier. If AT&T were to provide an alternative of 800 and/or 950 access, all of its subscribers could access the AT&T network from virtually any telephone, even where 10XXX is not available. I believe that AT&T's refusal to provide 800 service as an alternative for its subscribers is calculated, in part, to invite further consumer aggravation over blocking at locations served by AT&T's competitors and, thereby, to enhance AT&T's competitive position. As articulated by Congressman Jim Cooper, the author of HR 971, in his statement to the House of Representatives, AT&T should be more responsive to the needs of the calling public and deploy an alternative (1-800) access method for its customers.

AT&T refuses to provide 800 access for its own subscribers because it claims that such access would be expensive for the Company and would provid poorer quality service than 10XXX. In stark contrast to this position is AT&T's policy in its location agreements that a location served by AT&T should be entitled to block 10XXX as long as all other interexchange carriers remain accessible by 800 numbers. This result is discriminatory because it permits AT&T to relegate its competitors to a form of access which AT&T claims is inferior. The result further is contrary to the public interest because it means that in the event of a failure in the AT&T network, persons calling from locations served by AT&T

not only would be unable to place a call directly over AT&T, but, if 950 and 10XXX access are blocked, the person would be unable to use any of the many other interexchange services that rely on the AT&T network for the 800 access.

The greatest problem in AT&T's two-sided position regarding 800 access is that, if allowed, it creates a seriously anticompetitive situation. Two or more companies in competition to provide service for a particular location could provide identical commission and quality of services proposals to the location, but AT&T would have the material advantage of being able to assert that if the location owner selects AT&T, it could continue to block 950 or 10XXX access. Such a result serves neither the interest of fair competition nor the interests of consumers. AT&T should not expect to be assured 10XXX access, but, instead, should be prepared to afford its subscribers an alternative of 800 access as occurs with its competitors.

G. Lack of Uniform Regulation

S. 1660 applies to all operator services providers other that local exchange carriers. AT&T wold be within the scope of the legislation. This is an important aspect of the legislation. Although AT&T has indicated to the FCC a willingness to meet Commission requirements for operator services companies, certain AT&T actions (e.g. customer contract requiring only 800 access for its competitors) suggest that the Company may not fully agree with that position. At the state level, AT&T in several states has successfully fought against being included under operator services

restrictions. AT&T's ability to argue that neither it, nor its subscribers must comply with certain state and federal restrictions applicable to its competition creates an unreasonable and anticompetitive situation. Unfortunately, as discussed below, S.1643 appears to have the effect of permitting AT&T to avoid some of the most important consumer protection requirements of S.1660.

VII. Comments on S. 1643 and S. 1660

ITI wishes to commend Senator Breaux, Senator Dixon and Representative Cooper for their interest in the operator services industry. As ITI has indicated before, it does not believe legislation is necessary. The FCC has ample authority to address this area. More importantly, the industry and the marketplace and will operate to eliminate companies and practices that incite public concern.

However, if legislation is deemed necessary, ITI believes that the legislation passed by the House of Representatives, and introduced in the Senate by Senator Breaux, has been fashioned to accomplish the objective of fully informing the general public about competitive operator services and permitting callers a choice in carriers, while also leaving the FCC with the flexibility necessary to address issues that are complex and ever changing.

The Breaux legislation which is a companion measure to HR 971, the House passed bill, is the result of extensive discussions and work involving interexchange carriers, consumer groups, regulators, legislators, and other affected parties. ITI actively participated in that process. We congratulate Senator Breaux for sponsoring

this bill which represents the results of such a consensus building effort and which effectively deals with a complex subject for regulation.

ITI is concerned that the changes from the House legislation proposed in S. 1643, Senator Dixon's bill, are detrimental because they tend to favor the interests of one carrier over the interests of its competitors and the general public. Specifically, the changes proposed in S. 1643 are:

1. S. 1643 defines the term "aggregator" to include only locations that receive commissions or compensation for calls delivered to operator service providers. Other locations could block access to other carriers. As discussed previously, carriers can offer 1+, dial 0 or other services separately to a location or as a package. Incentives offered to a location to use a particular carrier can come from commissions or discounts, or some other financial arrangement. To limit a prohibition on blocking to only locations paid "commissions or compensation" by operator service providers has the potential of creating a major gap in the intended protection and to create a significant competitive advantage for the dominant carrier which already has contracts in place with locations that presently block access to 950 or 10XXX.

2. S. 1643, in Subsection 4(a)(6)(D) would require the FCC to outlaw "call splashing", which is defined in Subsection 6(6) as the transfer of a call from one operator service provider to another at a point other than the phone where the call originated. Incorrect billing caused by unauthorized transfers is an issue that

rightfully should be addressed. However, as shown by AT&T's recent network shutdown, transfers from one carrier to another sometimes are in the public interest. The FCC and the industry need flexibility to address this issue. A statutory prohibition would be shortsighted. While such a prohibition could provide some immediate economic protection for AT&T and possibly prevent incorrect billings due to splashing, it could stand in the way of a more reasonable and convenient industry - wide solution such as a means of passing the originating telephone number for the call to the OSP which receives the transfer. AT&T should be encouraged by Congress to cooperate in finding an industry solution.

3. S. 1643 also attempts in Subsection 4 (a) (4) (C) to address blocking by imposing rate caps at certain locations based on the lowest tariffed industry rate on file with the FCC. By imposing rate caps on companies based on the rates of a dominant competitor, S. 1643 creates an untenable and highly anticompetitive situation in which a dominant carrier can effectively control the rates of its competitors for certain services. As discussed above, certain of AT&T's current operator service rates at both the interstate and intrastate level are below what some of its competitors must pay to some LECs just to validate, bill and collect the call, without any consideration of the other expense adjustments, bad debts, etc. which are unavoidable costs of providing the service. Moreover, by virtue of the bill's restrictive definition of "traffic aggregator", this rate cap becomes discriminatory and less effective than it appears.

Finally, "rates" are extraordinarily complex in the sense that many different factors (e.g. time of day, form of access, volume discounts, etc.) affect the charge for an actual call. In my opinion, it is unrealistic to expect the rate structures of all carriers to be sufficiently comparable or to allow a timely determination of what constitutes the "lowest tariffed rate."

4. S. 1643 in general does not allow for the flexibility that is an essential element of any attempt to regulate in an area that is as complex and rapidly changing as telecommunications. By trying to directly outlaw certain practices or circumstances, the bill creates gaps that, in my view, ultimately will erode the intended purpose of this legislation. Moreover, many conflicting interests, including the right of a property owner to control his or her property and equipment, are affected. The FCC must be permitted to determine the most effective and administratively feasible means of addressing these concerns. S. 1643 unnecessarily ties the FCC to certain remedies which, in my opinion, will inure to the benefit of the dominant interexchange carrier, AT&T.

For these reasons, ITI urges rejection of the changes proposed by S. 1643. Thank you for the opportunity to testify. I will be pleased to answer any questions.

ITI
INTERNATIONAL TELECOMMUNICATIONS INC.
STEVE BICKERSTAFF
EXECUTIVE VICE PRESIDENT
LEGAL AND REGULATORY AFFAIRS

February 28, 1990

Sen. Slade Gorton
730 Hart Bldg.
Washington, DC 20510

Dear Sen. Gorton,

Thank you for the opportunity to respond to your questions regarding the competitive operator services. As you are aware, this facet of the telecommunications industry has been controversial for many policy makers. However, I believe that the issues have become better defined over the past few months, and that the FCC has taken affirmative steps to address the issues which prompted a legislative response. S.1660 represents a consensus of industry participants, consumer groups and legislators. If legislation is necessary, S.1660 is the best solution to the issues at hand.

It is my strong belief that AT&T has aggravated the problems in the industry, and that its business and policy decisions are the basis for many of the complaints and/or inquiries received by the FCC and others. It became evident during the recent hearing that AT&T's reliance exclusively on 10288 is not a viable means of access for its customers. According to testimony at the hearing, the cost for hotels alone to conform to this access type will exceed $2 billion and total costs for other locations such as hospitals, universities, and airports are likely to be just as substantial.

As you and your colleagues contemplate the merits of S.1660 and S.1643, I urge that you recognize the complexity of the issues and, should legislation be deemed appropriate, the FCC should be granted flexibility in addressing these dynamic and complex issues.

Thank you again for your interest in this emerging market.

Sincerely,

Steve Bickerstaff

Steve Bickerstaff

SB\dl

RESPONSE OF ITI TO QUESTIONS BY
SENATOR SLADE GORTON ON OPERATOR SERVICES LEGISLATION

Questions for Operator Service Providers: (OSPA and ITI)

1. **Last year, the FCC released the TRAC order to impose a measure of protection on consumers. What specific actions has your industry/company taken to comply with this order and what effect do you think these changes have had on consumers and the marketplace? Can we expect continued improvements from the order, or must it be codified? If so, does this imply that not all carriers are currently complying with the order?**

International Telecharge, Inc. (ITI) has instituted a number of programs to assure compliance with the FCC's February Order and with state regulatory requirements. Specifically, the following compliance actions have been taken.

* It has been ITI's policy to orally state its name at least twice on every call ("double branding") since inception in 1985;

* ITI has supplied revised tent cards and stickers to its subscribers with ITI's name and other required information written prominently on the materials and ITI periodically replaces these cards and stickers;

* ITI has amended its previous contracts with all of its subscribers as required by the FCC;

* ITI printed new contracts with the FCC requirements included within the document;

* In June, 1989, ITI created a Regulatory Compliance Function headed by an Executive Vice President. The Regulatory Compliance Division is responsible for ensuring compliance with the rules of the Federal Communications Commission ("FCC") and state commissions;

* All new subscribers are notified of state and federal requirements as part of the ordering process;

* On-site verification and enforcement of compliance efforts began in June. Compliance testing has been conducted in Arkansas, Florida, Georgia, Kentucky, Maryland, Mississippi, Missouri, Oklahoma, Texas, Virginia, Wyoming and the District of Columbia with numerous other sites scheduled for later this quarter;

* ITI regulatory personnel process and respond to every

inquiry forwarded to ITI by the FCC and state agencies and monitor compliance and customer satisfaction;

* In response to field tests and complaints on inquiries, ITI notifies subscribers of potential violations of state or federal requirements and may terminate services if necessary corrective steps are not taken;

* ITI has created a regulatory compliance handbook, with state-specific requirements and information, and distributed it throughout the company; and

* ITI has supported the efforts of the Operator Service Providers of America to inform its membership of the FCC's requirements and achieve compliance; ITI has been instrumental in the formation of the Operator Service Providers Of America (OSPA) and the adoption and enforcement by that Association of a code of conduct for all companies.

Actions by ITI, and the industry in response to the FCC order have had a material affect on consumers and the marketplace, as evidenced by the 50% reduction in complaints filed at the FCC. The level of complaints at ITI has also decreased significantly over the past year, especially with respect to the incidence of complaints of billing of incomplete calls, denial of knowledge that ITI carried the call, and claims that the caller thought he or she was using AT&T. This decline in complaints reflects many factors, including ITI's compliance efforts, better consumer understanding of the issues, and pressure within the marketplace.

It is important to recognize is that, although complaint levels have been used to monitor the state of the industry, the level of those complaints has been inflated due to the efforts of such groups as TRAC or the CWA, who has admitted to "assisting" consumers with the preparation of complaints to state and federal agencies. The BOCs, LECs, and AT&T have also prompted written complaints. In many cases we have found that the consumer never attempted to contact ITI to resolve an issue. In other instances, complaints are registered at ITI and federal or state agencies simultaneously. Such activities create the perception that consumers are more dissatisfied with OSPs than may actually be the case.

ITI believes that many competitive operator service providers and pay phone subscribers have made an effort to comply with the FCC's order (other than AT&T): contracts have been amended, signage has been provided and displayed, blocking of access to 950 and 1-800 services has virtually ceased, and callers are verbally notified of the carrier processing their operator assisted calls. The FCC's order has also resulted in

industry meetings to address the problems associated with blocking of 10XXX access and billing inaccuracies resulting from call splashing.

The perception that blocking occurs as a means of limiting a consumers choice of carriers is unfounded. To the best of my knowledge, such circumstances have been rectified as a result of the FCC's Order. Blocking of 10XXX continues to exist for three primary reasons; 1) exposure of phone owners to fraud; 2) technical limitations of equipment and the costs associated with upgrading or replacing that equipment as discussed by Mr. Oates of the AHMA and 3) 10XXX access is not universally available.

Billing inaccuracies resulting from call splashing were never a problem for ITI. ITI does not "splash" calls. Calls are transferred to AT&T through the local operator in the city in which the telephone is located. Unfortunately, this process is disruptive to the consumer because it requires that a tone be sent to the telephone instrument instructing the phone to dial the local operator. ITI also presently advises persons how to access AT&T through 1-0288. I would also like to address a statement made by Sen. Dixon in his remarks to the Subcommittee claiming that consumers had received two phone bills for "splashed" calls. It is my understanding from discussions with carriers who had engaged in this practice that all revenue for the call was forgone; that only one invoice was rendered for that call - the bill from AT&T. The TRAC Order has been a major factor in rectifying the billing problems associated with call splashing. However, the ultimate solution must be a system by which calls can be handed off to AT&T directly without causing the misbillings occasioned by splashing. I believe AT&T remains the biggest impediment to this solution.

While the FCC order has resulted in significant improvements in the industry, I believe it is time to take more aggressive actions vis-a-vis AT&T to resolve the problems associated with call blocking and splashing. To date little or no attention has been given to how AT&T's business and policy decisions have contributed to the real and perceived problems that exist for consumers. For example, AT&T has attested that it will comply with the terms of the FCC order but testified that while its competitors are required to prohibit blocking, AT&T's contracts are silent about blocking. Additionally, AT&T is at least partly responsible for the inaccurate billing that occurs when calls are "splashed" because it refuses to accept billing data from other carriers. Moreover, AT&T's insistence on requiring its customers to use only the 10XXX access method is the reason that blocking continues to be an issue. As I discussed in my testimony, this access method exposes premises owners to fraud. Furthermore, as evidenced by the AHMA, it will cost the hotel industry billions of dollars to accommodate AT&T's chosen access method. Other industries will incur similar costs. Therefore, while one can

conclude that blocking continues to be a major problem for consumers, the responsibility should be placed more heavily upon AT&T. AT&T should to either deploy a 1-800 or 950 form of access or agree to compensate equipment owners for the cost to upgrade or replace embedded equipment that is not compatible with the 10XXX access method.

The problem of blocking of 10XXX continues to exist at many locations because (1) AT&T, as the largest competitor, has made no effort to prevent its locations from blocking access to other carriers; (2) the problem of unblocking 10XXX is much more complex than originally anticipated by the FCC; (3) location owners lack a clear understanding of what requirements and options exist, especially when some major companies, like AT&T, at least implicitly permit blocking; (4) the industry remains in a state of flux with many interexchange carriers for the first time beginning to provide operator services; and (5) some location owners continue to choose to block for various reasons, including the risk of fraud.

In conclusion, I believe the FCC's order has had an impact toward protecting consumers from unfair practices by competitive carriers. However, I also believe that AT&T will continue its attempts to undermine its competition and violate the spirit of the order until directly ordered to cease such activity and until given some incentive to cooperate with its competitors in working out a solution for the industry as a whole. At present, AT&T is benefitted very directly by any and all controversy that occurs regarding competitive operator services. The key to more successful regulation of this industry is not the codification by statute of inflexible rules for a rapidly evolving technology and market; nor is the solution a sudden wave of enforcement actions. Instead, in my opinion, the FCC requirements as adopted provide the basic necessary regulations, but the FCC must (1) obtain a better understanding of this area of telecommunications, (2) assure uniform commitment and fair application of the requirements so that all carriers and locations know what is expected; and (3) make an effort to inform the general public and location owners of the nature of this competition.

2. How do your costs compare to AT&T's? I am particularly interested in your costs for billing, collection and validation services compared to AT&T's, and how that effects your rates. What, if anything, should Congress and/or the FCC do in this regard?

ITI has testified in numerous forums that its costs for billing collection and validation services greatly exceed those of AT&T, its largest competitor. These services are exclusively available through the BOCs and local exchange carriers and therefore, are non-competitive. The actual costs for AT&T are proprietary and confidential, however, data ITI has obtained through various sources reveal wide disparities in cost, as described below. Furthermore, ITI has found that the BOCs are earning profits for these services which are far in excess of generally accepted levels, thereby inflating costs to ITI.

	ITI	AT&T	BOC/LEC
Billing and Collection	Up to $.90	$.05 - $.10	$.01-$.02
Validation Cost	$.085 - $.125	$.005 - $.015	$.00177

AT&T's competitors also suffer from inferior connection arrangements which also impact the cost of billing, collection and validation services. For example, AT&T submits its billing to one central entity for distribution among the BOCs and all the local exchange carriers while ITI must distribute billing data through multiple sources, thereby increasing processing costs. In addition, not all local telephone companies will provide billing and collection services to non-AT&T carriers. Contel, for example, requires other carriers to purchase billing information and invoice customers directly adding expenses and administrative burdens for carriers. Other companies refuse to provide any relief to AT&T competitors.

Validation services to non-AT&T carriers are also inferior in quality. As was true of billing and collection, non-AT&T carriers must secure validation services from multiple entities which adds to the cost of each validation query. In addition, unlike billing and collection, a fee is assessed for each validation request, regardless of whether the call is billed or not. Lastly, the data bases do not permit non-AT&T carriers to validate certain types of cards which are issued in conjunction with the BOCs and local telephone companies. Such calls account for an increasing proportion of calls processed by competitive carriers. Because the data base denies the card number, the caller is denied this billing method and must select an alternative or use another carrier (AT&T). This occurrence, described by Sen. Exon during the Senate Hearing, not only

inconveniences the caller, it also increases the operating costs of carriers who pay $.085 - $.125 for invalid messages, costs which must be recouped from billable calls. These factors increase the cost of validation to as much as $.23 per call billed. As a result of these excessive costs and onerous processing requirements, ITI can pay up to $1.23 to validate, bill and collect revenue for a call. This amount does not contemplate the costs ITI absorbs for inefficient processing of validation queries and billing records on the calls that remain unbillable or only partially billable because no billing and collection agreement exists. In addition, there is a cost associated with the operator's time and network facilities to bring unbillable calls to the operator center, which must be recovered in the charge for calls which can be billed and collected.

There are a variety of actions that Congress or the FCC could take to remedy the problems.

1. Mandate that all local telephone companies provide billing, collection and validation services at the same price, terms and conditions to all carriers;

2. Require that all calling cards shared between the local exchange carriers and AT&T be made available to other carriers for billing, collection, and validation;

3. Direct all local carriers, including the BOCs, to make all contracts for billing, collection and validation available to the FCC for inspection and a determination that such services are made available on a non-discriminatory basis. Any company found in violation of these directives should face severe penalties.

4. Order that AT&T develop the capability to accept calls transferred from other carriers or, alternatively, deploy a universal access method, such as 1-800 for its customers.

The impact of such requirements on rates could be substantial. Over the past year, the average charge over ITI for an interstate call has dropped 20 percent. There are many reasons for this decline, but one has been ITI's ability gradually to obtain billing and collection agreements for an increasing numbers of LECs, even though it has had to pay an outrageous rate in some circumstances.

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3. What trends do you foresee for your industry/company over the next year?

The operator services industry has undergone significant changes over the past twelve months, and I anticipate that these trends will continue. The first companies to begin providing competitive operator services on a significant basis were telecommunications companies that focused primarily on this one market which at the time, remained a virtual monopoly for AT&T. Until 1989, traditional 1+ carriers provided only incidental competition with AT&T for service to locations such as hotels, payphones, etc. These carriers began fully competing for the operator service business last year as public payphone presubscription emerged. Some of these companies have made financial and operational commitments to provide operator services on their own, while others have contracted with more experienced companies like ITI to support this aspect of their business. This year, for example, ITI began providing operator services to 1+ carriers by contract. Calls are branded in the name of the contracted carrier by ITI so that the processing of the call by ITI is transparent to the caller. Virtually all major interexchange carriers in this country now provide or are in the process of obtaining the capability of providing competitive operator services.

It has been my experiences in the telecommunications industry that innovative and new market areas often are developed by smaller companies which are better at focusing their energies on one subject. Once successful, these companies then merge into or are acquired by other larger companies. Such a scenario is likely in the area of operator services. ITI has grown partly through acquisition. I foresee that many of the smaller companies providing operator service today will be acquired by other companies as the market settles. At the same time, however, I expect to see new companies arise wherever a new market or idea is discerned. This constant evolution is healthy and should not be curtailed.

In regard to rates and regulatory matters, I believe that the level and significance of consumer and regulator concern will continue to lessen in 1990. As discussed in regard to your first question, FCC complaints have declined 50% the past year. ITI and other companies have taken affirmative steps to address the concerns reflected in these complaints. However, I believe that much of the controversy surrounding competitive operator services has been caused by general public unawareness about changes in the telecommunications industry. In some instances, however, groups or individuals actually have distributed misinformation about operator provider rates and service. I also believe that AT&T and many local exchange carriers have taken

advantage of this generous public confusion to benefit their own competitive objectives.

Specifically in regard to rates, I believe the trend is downward for companies other than AT&T. ITI's average interstate rates have fallen 20% over the past year. I expect further reductions this year. The company's intrastate rates have been at or near AT&T rates since 1988, even through in many states these AT&T operator services rates are artificially low and are below a compensatory level even for AT&T. ITI also offers a discount of 5% below AT&T's interstate rates when the caller uses a major credit card.

The general trend downward in rates for companies other than AT&T is the result of at least four factors: (1) reduced costs of operation as a result of improved billing capabilities (i.e. fewer unbillable calls because no billing and collection agreement exists) economies of scale and some reduction in billing and collection and validation charges; (2) pressure in the marketplace from consumers and location owners who are sensitive to rate levels; (3) regulatory concerns; and (4) lower access charges.

A basic trend of competition is that it drives prices toward cost. As a result, I believe that AT&T's charges for the message toll services (MTS) portion of an operator assisted call (i.e. the time sensitive charge for the call itself) will continue to decline as access charges continue to drop. On the other hand, the operator assistance portion of the charge is likely to increase in many states for AT&T because, as only a minor source of AT&T revenue, these rates in the past have remained unchanged for years at artificially low rates that no longer reflect the actual cost of providing the live or automated operator portion of the call. For example, in some states the rate is as low as 35 cents. Regulators are likely to resist any change, but ultimately in any competitive marketplace the price of a service or product should reflect is cost. Therefore, I believe that the difference in rates between AT&T and its competitors will narrow and largely, if not entirely, disappear.

In regard to future technological developments, I believe that the companies will be rapidly expanding the scope of services available through their operator networks. The scope of these new services already is becoming visible. Very recently, AT&T announced that it would begin offering a message forwarding capability similar to one which ITI has provided since early in 1989. U.S. Sprint has announced an intention to develop a voice recognition card. ITI has entered into an agreement with Voice Control Systems (VCS) for development of a similar voices recognition capability. In addition, ITI has announced, an agreement with CisCorp, a Dallas based information service provider, to provide various information services (e.g. weather,

stock, sports, television) inconjunction with ITI. Other information related services are expected in the future especially through robotic capabilities not requiring a live operator. It is in this area of improved and new service that competition among operator service providers will most directly benefit the calling public.

Finally, it is my hope that ITI can be a leader in bringing understanding and stability to the operator services market in 1990. ITI is the foremost provider of operator service outside the Bell companies. ITI presently originates calls on an interstate basis from all states, and the District of Columbia on an international basis from approximately 35 foreign countries. ITI is authorized on an intrastate basis in 38 states. Applications for intrastate certification are pending in 3 additional states. The remaining nine states are simple LATA states where ITI does not presently plan to compete on an intrastate basis. The issues surrounding operator service are complex and the perception of those issues has been affected by considerable misinformation and competitive bias. I hope ITI can overcome these obstacles to become a model for a successful, consumer attractive telecommunications company offering operator and information services throughout this country.

Senator INOUYE. All right, thank you very much.

As you can see in planning this hearing we deliberately set up all panels in such a way where we were bound to have divergent views.

Mr. Wagenhauser, it has been suggested by those in the industry that they are presently in a period of transition. And one should anticipate problems of this nature arising, when there is a major change coming about. Do you agree with that?

Mr. WAGENHAUSER. Well, we have heard these companies continually apologize for problems over the past two or three years. While consistently acknowledging there have been problems in the past, the problems have continued. Their efforts to resolve these problems have simply not worked.

For example, the representative from ITI's just stated that they have amended their contracts to prohibit blocking. Well, that is fine and dandy. But unfortunately, the blocking is still going on at ITI phones.

These "problems," have occurred for the past three years and undoubtedly will continue to occur until someone has a club waiting over them, because as we have seen the carrot-and-stick approach simply does not work with this industry.

Senator INOUYE. Mr. Bickerstaff, are you still having blocking, notwithstanding the contracts?

Mr. BICKERSTAFF. The contracts have been amended. Locations control blocking. The company, who carries the traffic does not necessarily know whether the location is blocking at any particular time unless it is brought to the carier's attention. When it is brought to the carrier's attention, or ITI's attention, we have in place a compliance division or department, which has a number of responsibilities. One of those is to respond to that particular complaint and to address it with the location owner.

A major problem we encounter is that the location owner says, "You are the only person who has brought this to us as a problem. When I talk with the industry, or I talk with other carriers such as AT&T about providing service to my location, they do not tell me that blocking is a problem. Yet you do." ITI may identify a location such as through our random tests which we have been doing over the last six months around the nation at various locations. When ITI goes back to that location, that location says, "You are telling us we cannot block, but other carriers are telling us that if we do business with them, we can." So, I would have to say, Mr. Chairman, that certainly there are locations which continue to block access. There are in fact major problems that lead the location owners to decide to block. I would in fact offer to the committee the testimony of the AT&T witnesses in New York and Maryland, one calling attention to the significant risk of fraud that occurs at locations if the location unblocks. And second, the position of the AT&T witness in Maryland, where he specifically said that although approximately 50 percent of the premises equipment could be modified without considerable expense, 50 percent of the equipment in this country could not be modified so as to make blocking unnecessary without considerable expense.

In other words, if a location owner is going to modify his or her equipment, in 50 percent of the locations, they are going to have to

incur a considerable expense to do so while preventing fraud. I would offer as part of the record that testimony or those statements in addition to the testimony which I have already offered, sir.

Senator INOUYE. The general understanding of the word competition in this committee is that it is a social phenomenon that results in better services, increased benefits to consumers at low costs. We gather from our letters from irate constituents and others that services have not improved, benefits have not increased and yet the cost to the consumer has increased. Any comments?

Or is that a wrong observation? That is the observation I get from the letters I read.

Mr. BICKERSTAFF. Yes, sir.

Senator INOUYE. You said there are substantial benefits. What are the substantial benefits of your operation?

Mr. BICKERSTAFF. Mr. Chairman, let me begin in answering that question by distinguishing perception from reality. I think it is certainly fair to indicate that in the general population there are persons who are responding to particular operator service experiences they have had that are not favorable.

But in terms of substantively what is happening, I think that an examination will find that you have already seen specific and material benefits which are designed to benefit the consumer and do so. Number one, you have had development of new technology for the operator. New operator capability. The ability, for example, to identify a particular phone and provide services to that particular phone, wherever it may be in the country, and to provide different services to one phone than to any other phone.

Development of that technology took time and reflects a great deal of investment. It has resulted, then, in a number of services that initially were not available until the advent of competition. If you go back five or six years ago, a person generally did not have the ability to use credit cards in addition to the telephone company calling card. One of the first things that happened was competition presented these other credit cards as an alternative billing mechanism. AT&T and the BOCs responded in many instances by providing that same alternative.

A second example is the advent of what is called message forwarding. Message forwarding is an ability that when you are traveling and you try to place a call and you cannot complete that call because it is busy or there is no answer, you can through ITI and through several other companies arrange to have that company continue to place the call until a call is completed and leave the message that you intended. So, that if you are in Atlanta—where I seem to spend my entire life passing back and forth through the Atlanta airport—and I place a phone call, and I cannot reach my office or cannot reach my wife, I can leave a message to have it delivered through ITI. ITI does not serve the airport there, but its message forwarding can be reached at the airport. Another example is the availability of multilingual operators; ITI offers ability to complete calls in 24 different languages. What that has done is to attract the interest of certain groups, such as Japanese businessmen who want to do business with a certain location which has that capability. There are other benefits I believe.

Senator INOUYE. Mr. Bickerstaff, I can understand if all the services are provided, one ought to be willing to pay a little more, but I had these problems myself, just trying to get hold of my office. I could not use the 800 number to get the Capitol, I could not use my calling card and the charge that I received was more than double what I would have paid if I selected my own carrier. It was a simple call, no translators, no calling services; I just wanted to call my secretary.

Mr. BICKERSTAFF. I understand.

Senator INOUYE. Why should I pay more than twice as much for that call?

Mr. BICKERSTAFF. Let me react on that. You earlier described a personal experience of yours which I would like very much to address. There are a number of factors which could effect what happened, including misconduct by whoever the carrier was. I just do not know. I need some more specifics about your experience.

But the issue of rates is one that I think is very important. The perception of a user, yourself, for example, with regard to what is the correct charge from a location for that particular phone call may bear no relationship to what the cost actually may be for providing that service because the rates that AT&T has charged over the years for a particular operator type service, do not necessarily reflect AT&T's cost and, in fact, in some circumstances, clearly do not.

To give you an example: each call includes a charge for operator assistance. At the interstate level, AT&T charges $1.75 for operator assistance on a station-to-station call. In some states it is as low as $.80, with $.35 on calling cards calls. The same operator sitting in a seat handling one call that they can complete as interstate; the next call they complete as an intrastate call. And yet, on one they bill $1.75 and on the other one they bill $.35. The person who places the call may find themselves perhaps paying more than the charge that AT&T would impose for that call, and complains because of the assumption that that the specific charge bears some rational relationship to the cost of providing the call, and it does not necessarily at all.

A second consideration is that while, certainly as the FCC indicated, there are additional costs that companies that compete with AT&T incur that they should have a responsibility for reducing as costs of operation, among the biggest costs faced by these companies are ones where AT&T has a basic advantage because of its prior relationship with the Bell Operating Companies.

In order to compete as an operator service company, you have to have the capability to bill and collect through the local exchange carrier, and you have to be able to validate the numbers for purposes of billing and collecting. The rates paid by ITI go as high as 90 cents per message. AT&T has protected its cost as proprietary, but we believe for that same message AT&T's costs is as low as two cents to five cents.

So we are in the position where, for some independent telephone companies, the charge to ITI for only billing the call, nothing else included, is going to be more than AT&T has as its rate for the operator-assisted portion of that call.

Now, I use the example 90 cents. That is not our average cost, but our average cost is down to the 25 to 30 cent range, and that is substantially above what AT&T pays for exactly the same service. So that to expect ITI to turn around and bill at AT&T's rates is unreasonable when number one, the AT&T rate may or may not be cost-based because AT&T varies its rates for different types of calls, and when number two, the expectation is based on the assumption that the cost to us of delivering and billing that call is the same, when in fact, we are still encountering major instances of discriminatory pricing.

Senator INOUYE. Mr. Hines, they have been mentioning AT&T quite a bit.

Mr. HINES. A couple of things I would like to say, Mr. Chairman, backing up to Mr. Bickerstaff's opening testimony. He made a comment that AT&T's contracts did not have to be amended. I do not recall if he stated or implied that AT&T's contracts have provisions in them for blocking. I mean, that is just not our policy. If there are contracts that have AT&T's name on them that have blocking provisions in them, I can tell you it is not our policy and it is a mistake and someone has done something.

My understanding is that all of our contracts are silent on the matter of blocking or unblocking. It is a contract to do business and it does not either require or in any way, shape or form, address the subject of blocking in those contracts.

The other questions that have been raised is the testimony that was submitted from the Maryland proceeding, I guess it was, relative to the cost of unblocking 10XXX and the interpretation of the AT&T witness' response that 50 percent of the aggregators are going to be strung out without a cost- effective solution. I again dispute that.

Our analysis is showing that solutions--and there are more than one for some aggregators—in all cases these solutions will be mapped to whatever the particular environment is, but that the range is somewhere between $300 and several thousands of dollars. Not a major expense.

The third thing I heard was that AT&T's prices are different. They are in some jurisdictions, but to say that they are not cost based is incorrect. We could not be in business for very long in a way that anybody could if our prices were not based on the underlying costs of those services.

Finally, the matter of the validation. The assertion that AT&T has an advantage in the validation: one, I can only answer from half of that question. I do not know what the arrangements are between the local exchange companies and ITI or any of the other operator services providers, but my understanding was is that validation information was available in two forms.

One form was that you could take the data and you could arrange for your own storage and use it as often as you wanted on a fixed-price basis and that it was available on a per attempt basis by reaching into a data store that the local exchange companies had made available to the operator services provider.

I am not familiar with the cost, the prices there. I mean, we do buy the data. The data is loaded into the AT&T network. We do pay the Bell Operating Companies. It is correct. We do pay them

under SNFA contracts which are a product of divestiture. Those contracts will expire at the end of 1991, the start of 1992, but my understanding is that that same data that is available to the operator services providers in that same form that it is to AT&T at the identical price as it is to AT&T.

And so I am puzzled a little bit. What I keep hearing is that the problems that we are experiencing in the public marketplace are all AT&T, and I just do not think the record reflects that. And I do not think that the comments that you are receiving from your constituents reflect that either. Thank you, Mr. Chairman.

Senator INOUYE. I have just one question. Well, I do have many others, but just at this point.

Mr. Berg, we hear the word commission quite often, and I gather that the commission plays an important part in the final bill that the consumer pays. And I would gather that the OSPs bid to handle certain businesses, and the bid would include commissions. What is the nature of commissions in the bids that are provided? Can you give us examples?

Mr. BERG. I personally cannot, Senator. I am here on the one hand representing the trade industry, and the general business practices of the underlying companies are not immediately known to me directly. The company that I work for on a day-to-day basis is involved with specialty billing services for operator service providers, and so I do not have direct knowledge of that.

Senator INOUYE. Mr. Wagenhauser, do you have any information on commissions?

Mr. WAGENHAUSER. From what I have seen, it has varied quite a bit anywhere from a percentage of the revenue to a flat charge for each call. In addition, you also have the other way that they are able to hide costs-through the use of a "premises owner surcharge." This of course is not represented in the rates.

What has happened is, through a contractual relationship between the AOS company and the aggregator, the AOS company will bill up to a dollar (where allowed) for each call. This surcharge is added on to the other charges. So, for example, you could be paying a base rate plus a dollar surcharge when you are at these phones. This really is nothing more than an added incentive to use the AOS company, specifically-an added kickback.

Senator INOUYE., Can you enlighten us, Mr. Bickerstaff, on commissions?

Mr. BICKERSTAFF. Yes, I could attempt, yes, sir. I have AT&T's commission plan here, anyway.

Senator Inouye: Maybe I should call on Mr. Hines to give yours.

Mr. BICKERSTAFF. AT&T's commission plan for private pay phones would provide for a payment of anywhere between 8 percent and 17 percent of the revenues generated from that particular location. One thing, I would just—observation—-

Senator INOUYE. This is services provided on a bid?

Mr. BICKERSTAFF. Yes, sir.

Senator INOUYE. Is it an auction of some sort?

Mr. BICKERSTAFF. It is a competitive bid situation in which I guess——

Senator INOUYE. That is the competition. It is not competition to get the consumer.

Mr. BICKERSTAFF. No, it is a combination of a number of things. Certainly, the commission payments are a part of that. And understand that commission payments have been paid by the local exchange carriers and Bell Operating Companies and AT&T for years. Commissions are not a sudden development.

Second, undoubtedly in competing for a particular location, the commission is important, but the quality of service, the satisfaction of the callers using those phones from a location are all very important.

The major customers, such as hotel chains, major public entities, cities, counties, school districts, states, are very sensitive to the question of whether people who use their phones are going to be satisfied or are going to be complaining. The hotel does not encourage people to no longer come to that hotel because they are dissatisfied with the price of a call. So that is a major factor also.

The important factor, specifically by location, is going to vary. Certainly some locations are going to place a greater emphasis on the commission; some locations are going to place a greater emphasis on other parts of whatever the total package of services may be. The package, like any competitive bid, is going to have a myriad of different parts to it.

Senator INOUYE. What is the commission schedule for ITI?

Mr. BICKERSTAFF. It is very comparable to AT&T's in terms of percentages.

Senator INOUYE. What do you mean by comparable?

Mr. BICKERSTAFF. The percentages, as I indicated for AT&T, are between 8 percent and 17 percent of total revenues. The commissions can vary according to percentages paid, according to the size of the location, according to whether you pay it as a percentage of the usage-sensitive portion of the call, or whether it is a percentage of the total revenue from the call. It varies, but ITI's percentages are going to be somewhere in that 8 to 20 percent range.

Senator INOUYE. What is the lowest for you?

Mr. BICKERSTAFF. I do not know, sir.

Senator INOUYE. What is the highest?

Mr. BICKERSTAFF. The highest that I have seen is in the low 20s as a percentage.

If I may, sir, to emphasize one other point, and that is that focusing on the issue of commissions is one of the difficulties in the Dixon bill in the sense that a commission is not the only financial incentive to the location to choose a particular competitor among three or four companies who are presenting their proposals.

There are other ways to provide a financial benefit back to a location other than a commission. You can, for example, if you were providing one plus service out of that hotel along with the operator service, reduce the location's cost by providing a discount for increased 1+ and 0+ usage. That is, in return for increasing the 0+ usage over your company, you decrease the charge to that location on the 1+ service.

Or perhaps, if you happen to be an equipment manufacturer, you give the location a special deal on the equipment, the PBX that you are going to provide to them. Or you give them other special benefits that otherwise they would have to pay for, like specific

cards given to people or special services that are offered to that location.

And that is the problem that we perceive in the Dixon bill, i.e. that what it does is carve out a particular means of attracting a location, a commission, and ignores the fact that if you are intending to prevent blocking at locations you are going to have to have a broader protection within the legislation, because otherwise a company simply changes its financial relationship with the location.

And we specifically think that the narrowness in the Dixon bill is of greatest advantage to AT&T at the present time because AT&T has the greatest number of other means by which to provide those incentives.

Senator INOUYE. Mr. Hines, do you have anything to add to that?

Mr. HINES. Well, just the fact that AT&T does still file its rate information with the FCC and with all the states. They are scrutinized. The implication that AT&T can move prices and costs around at will is just not founded. The FCC in its capacity of oversight of AT&T continues to look at our tariffs, the one plus and the 0 plus.

I have not heard of any complaints from anyone formally that AT&T is giving away services on the one hand in order to make a sale on the other hand. I presume that if we were doing that and if someone suspected that, that we would have heard about it very quickly, including pending lawsuits, because you run a terrible risk that that kind of stuff can get very anti-competitive and subject to the antitrust laws very, very quickly.

Senator INOUYE. Thank you very much.

Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

Mr. Hines, I sat here, and it is kind of like the Burlington Northern Railroad in Montana. Everybody takes a shot at you. You know, we are captive shippers up there. And I am always reminded about the story about the farmer who had just an ideal growing season and everything went just right, but two days before he harvested the crop, a big hail storm came and wiped him out. He walked out there and said, "Gosh, darn, that Burlington Northern Railroad, anyway."

Mr. WAGENHAUSER. Did you help negotiate the agreement that resulted in the passage of the Cooper Bill on the House side?

Mr. WAGENHAUSER. We had conversations and worked with Mr. Cooper on that bill. We believed that it was a good first step. We, of course, had wanted tougher legislation to come out.

Senator BURNS. But that was sort of a compromise that you had worked out with the congressman, and that bill is probably like the Breaux bill, now, right?

Mr. WAGENHAUSER. It is the Breaux bill.

Senator BURNS. Do you still support the passage of the Breaux bill, or are you working for passage on Senator Dixon's bill?

Mr. WAGENHAUSER. Well, we support both bills. We think that the committee should look very carefully at at least one section of the Dixon bill which we do support, and that is with regard to the blocking problem.

One of the reasons is that it has been a year since the Cooper bill, H.R. 971 has been introduced. Supposedly, a lot of the blocking

and the problems associated with it, were to have been worked out by now. Unfortunately, since even the initial AOS requests for waivers of this rule at the FCC, we have seen no change.

As a result of the absolute lack of change, we feel that a legislative club is needed in this particular case because of the inaction. Which leads me to the case that yes, we do support tougher legislation on the blocking.

Senator BURNS. Now, you read off in your testimony this morning some excessive charges and you did not mention what those charges were. I guess to boil it down, to get down to bottom line, I would want a couple of examples. Do you have what they paid or anything like that?

Mr. WAGENHAUSER. Yes, I have those included in my written testimony. I have attached about three, I could have attached a few thousand. If you would like, I would be happy to read off some of those charges.

Senator BURNS. Mr. Berg, in the organization that you represent here this morning, have they done any work along the line of trying to suggest rules of ethics and rules for their operators to maybe establish the credibility of your industry and its operators?

Mr. BERG. Well, Senator, the first step that OSPA took upon its inception in 1988 was to formulate a code of responsibility, and that code is attached to my written testimony. It incorporates within it many of the provisions that are included in both the TRAC order and in the Dixon and Breaux bills, inclusive in that being the nonblocking, the appropriate notice and other issues.

Earlier this year, OSPA also went out to its membership companies and asked for written certification from those companies that in fact they were in compliance with the terms and conditions of that code of responsibility. And the companies that are part of OSPA today have so certified that they are in compliance.

Senator BURNS. I would ask Mr. Hines, would you give me a detailed breakdown on how costly it would be for AT&T to provide 800 travel service on a nationwide basis?

Mr. HINES. That is in my written testimony which I did not read, but the 800 service as we examined it would be about a $50 million development cost and probably a $250 million a year operating cost.

Senator BURNS. AT&T has many exclusive phones in airports and hotels. How does the caller use MCI and Sprint travel card for these phones?

Mr. HINES. Well, we completed unblocking all of the public phones where AT&T owns them, in 1989. And so today when you go up to a phone that is owned by AT&T in one of those locations, you can reach MCI or Sprint by any of the three alternate access codes available, and that then is a function of which the MCI's and the Sprints of the world would like to have their customers use. So they can be reached on an 800 dial basis, if they prefer to use one of their calling cards, they can reach them on the five-digit 10XXX code for those various carriers.

Senator BURNS. Mr. Bickerstaff, what do you regard as the principal benefits of competition that you bring to the operator services marketplace? I mean, I know we have gone over some of that, but let us get to the bottom line, here. Is it truly a competitive field?

Mr. BICKERSTAFF. Senator, yes, I think it is a competitive field, and I think that the competition will, bottom line, produce, as I indicated, a myriad of services available to the traveler that the traveler does not have today, or did not have two or three years ago, and that those services will increase and will be there only if you have competition in this marketplace. They are not going to be there if you do not.

Senator BURNS. I have some more questions, but I think we can get them answered in writing as I go through your testimony, and I appreciate all of you coming here today, and I have no further questions.

Mr. Chairman, thank you.

Senator INOUYE. Senator, thank you. Senator Exon.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. Mr. Chairman, thank you very much. I apologize to you and the witnesses for being late to this meeting. We have had a stress assessment hearing over in the Armed Services Committee with the Armed Services Chief, and I just had to be there for that.

This is a very important meeting, and I wanted to be here not only for this part, but I wish I could have been here for the earlier meeting on the FCC. There were many things that I wanted to bring up on this subject, and also with regard to some of the difficulty we are having in Nebraska today on the required blackouts of certain cable facilities.

That is causing a great deal of stress out there. There are two sides to that question, but so far there has not been a right side, and I guess just once again we have to keep working for compromise.

Mr. Chairman, I listened very carefully to your problems in getting in touch with your secretary and I have had some difficulties in that area as well. I had heard about your particular case and I checked into it, and I found out that all of the problems with your getting through were not just the difficulties in the switching arrangements, but I understand the fact of the matter is your secretary just did not want to talk to you.

It somewhat struck home to me, because we went into a cost-cutting campaign in my office and we decided to eliminate collect calls, and I called my secretary on a very important matter one day collect, and she refused the call.

Senator INOUYE. Is she still there?

Senator EXON. She is still there. She works cheap.

Seriously, let me tell you a case in point that I ran into Monday of this week. I was in North Platte, Nebraska, and a fellow traveler of mine tried to use the telephone in North Platte with a credit card that he had, and it came back out and he was very upset.

He said, I always have this trouble, and the only place I seem to have the trouble is in the North Platte airport, of using my credit card to call in. I asked him what his credit card was, and it so happened that he had a Lincoln Telephone & Telegraph Company credit card, but he said, when I called in the operator came on and

said well, you have to do this, you have to do that, to complete the call.

He said I wish you would get that straightened out, and I told him well, we are going to hold a hearing on that this week. I do not know whether I can get his answer or not. I do not know that you had the answer, gentlemen.

But I just say, with all this deregulation and with all of the costs that are involved and the different rates and the multiple billings that the customers are going through now, they have generally put up with that and they are not as much up in arms as I was afraid they might be, but now we have this matter that we are reviewing here now with regard to operator, special operator services, and certain airports having contracts that are different than others, and I can understand all of that. I think what the industry as a whole—and when I talk about the whole industry, you are going to have to do a better job than you have done in this area in the past, or we are going to have more of the type of complaints that I just outlined to you.

First, can you simply tell me from what facts I have given you on that happening of Monday last, why was my traveling companion placed in that kind of a situation, and it so happens that we had a time frame there where we had to move on, and he was very upset about it.

If he was upset, there must be other people being upset. Is the problem that he had the wrong credit card from the wrong company? I suppose that would be the first question. If so, what credit card should he buy that he would not run into that situation?

Mr. BERG. If I might, Senator, that is an issue that the FCC—and you unfortunately missed their earlier testimony in talking about the issues before them regarding the Cincinnati Bell issue that has been raised before them and also the Capital Network Comptel filing.

The essence of that is there are joint marketing or joint arrangements, and I guess I should not characterize them one way or the other, that have been entered into between AT&T and many independent telephone companies. As a result, the local telephone companies, in this case Lincoln Tel, has issued a credit card—or, I should say, has had AT&T issue a credit card on their behalf.

For operator service providers, one of the major problems that we face today is our inability to either bill or validate quite a number of telephone calling cards, one of which falls into that category of calls that look just like any other credit card, and that is that it bills back to your local telephone number.

It includes your telephone number in it plus your PIN digit, and there is really—it is really indistinguishable from any other kind of calling card in the marketplace, but to date the operator service companies have been unable to either bill, and certainly to validate on those calls, and so the calling card that your traveling companion is utilizing is a very good calling card, but it will not work at a location served by an operator service provider who, in the interest of preventing fraud, is validating that call.

The response that they get back is the card is not on file, which might very well be a fraud. It might very well be something where the information is just not deployed.

I hope that was not too technical an answer, but it is a very technical issue we are dealing with here.

Senator EXON. I think I basically understand. I do not know if that solves the problem. Now that we have identified the problem, how do we solve it?

Mr. BICKERSTAFF. There are at least two ways, if I may, Senator. Presently, within the Bell system, AT&T can submit a single tape, or a compilation of all of their billings, and those will be distributed to every local exchange company in the country and billed.

Other carriers have had to go through a process, not of obtaining one contract and agreement for everyone, but a process of obtaining separate contracts and separate billing agreements and mechanisms for the wide variety of Bell local companies and independent telephone companies.

So one potential solution to the situation you described is a requirement that all of the telephone companies, the local exchange companies, be prepared to bill and collect for all carriers rather than requiring each long distance company to negotiate an individual contract. Since there are over 700 independent telephone companies, those agreements just are not in place yet for many companies providing operator services.

The second possibility is one in which, by agreement with AT&T, that there could be a shared arrangement on the access to those cards, and to the validation and the billing collection on those, so that by some contractual agreement with AT&T every card could be available anywhere and everywhere. There have been requests to AT&T to permit this result as well.

Senator EXON. Well, you know, we are all familiar with the fact that, with few exceptions—I do not think I have ever run into it, but I could run into it—if I buy a ticket on a certain air line and I get to that certain air line and for whatever reason that flight is not going to fly at the appointed time, generally they will recommend that I go to such and such a window, or such and such a window, because that is the next flight out to the destination that I am seeking to get to.

Normally in those situations they will take the ticket that was offered on the other airline, and recognize that to fly on their line, and then I suppose there is some billing arrangement where the airline that I eventually took bills and receives the money from the air line that I contracted with when I bought the ticket.

It seems to me that something along those lines should be worked out. I recognize it is more complicated for telephone systems.

Let me ask you this question, to try and get this rate situation. Let us suppose that that friend of mine in North Platte the other day making a credit card call from the airport would have simply gone out of the airport and gone across the road to a filling station that was not under the airport proposition, and if he had made that call over there, I would assume that that would have been run through in the ordinary fashion and the cost of billing might have been different at that filling station across the street than it was from the airport itself.

It seems to me that maybe we ought to get back to some kind of a proposition that the cost of that call, as far as the long distance

part of it, should be the same whether he makes that call or originates that call from the airport or across the road.

Mr. Chairman, I see we have a vote on, and it has just been called to my attention. If you could answer that question very briefly I would appreciate it.

Mr. HINES. Just one comment before I answer that one. The answer is, on a calling card, that you can accept in a network for payment whatever contractual agreement you have made with the various payment system providers.

As I mentioned before, you can in some cases use your MasterCard, American Express, Visa, it really is dependent upon what arrangements the carriers make. We accept the AT&T calling card, we accept the calling cards of the local telephone companies, in certain locations we also accept most of the major credit cards. I mean, that is our practice, that is our policy, that is what we have negotiated.

I assume that that customer that you described did not come to the AT&T, because I would have expected that we would have accepted Lincoln Telephone Company's calling card to complete a call.

Senator EXON. He did not know, Mr. Hines. He just uses his credit card and he picks up the telephone. He did not know, or he did not care.

Mr. HINES. Your concern was, he should have been able, and the comment has been made or suggested that other carriers are denied that opportunity of accepting the local telephone company calling card, even so far as to say that AT&T can negotiate one contract that covers all of the billing and collection contracts.

That is not just factually correct. We have to negotiate with them one by one, just like anybody else, or if they decide to pool and issue and sign one contract on behalf of multiple suppliers, then I presume that same opportunity is available to everyone.

Mr. WAGENHAUSER. Could I make one brief comment on that? You might want to consider, or tell your traveling companion, that it actually may have worked out to his benefit. If he had billed his call he would be coming to you for a different reason—why did I get ripped off at this phone?

Senator EXON. I do not think that that would have satisfied him in the attitude that he had after his experience. He was not very happy.

Senator INOUYE. I would like to thank all of you for being so patient and participating in this morning's hearing. We will stand in recess for ten minutes, and when I return we will take up the second panel.

[Recess.]

Senator INOUYE. We will now resume our hearing, and for the final panel I am pleased to call on the Executive Vice President of External Affairs of Bell Atlantic of Arlington, Virginia, Mr. A. Gray Collins, Jr., the President of People's Telephone Company of Washington, D.C., Mr. Jeffrey Hanft, the Executive Vice President of the Communications Workers of America, Ms. Barbara J. Easterling, and the President of Capital Network System of Austin, Texas, Mr. Robert J. Rowland, and the Manager of the Hotel Sys-

tems and Telecommunications of the Sheraton Corporation, Mr. William G. Oates.

Lady and gentlemen, I welcome you, and I thank you for patiently waiting, but I think the testimony so far has indicated this is not a simple matter before us, but we hope to do something about it.

May I now call upon the representative of Bell Atlantic, Mr. Collins.

STATEMENT OF A. GRAY COLLINS, JR., EXECUTIVE VICE PRESIDENT, EXTERNAL AFFAIRS, BELL ATLANTIC

Mr. COLLINS. Thank you, Mr. Chairman.

I would like to talk about giving customers the power to choose long distance companies that will carry their calls from pay telephone stations in airports, train stations, gas stations and other public places.

Most consumers using public pay phones do not realize that when they make a long-distance call from a public pay phone, that call will usually be carried not by the long-distance company that they have selected and at the price they expect, but by some company that had been picked by the owner of the property where the pay phone is located.

The consumer ends up paying whatever that long-distance company decides to charge, even though he never selected that company to carry his call. In short, the consumer has lost the power to choose the long-distance company that provides him with the best service at the lowest price.

Fortunately, there is a solution and it has been referred to a couple of times this morning, called billed party preference. With billed party preference, long-distance calls made from pay phones which are billed to a telephone credit card, to a third number, and collect calls, will be carried by the long-distance company selected by the customer who is paying for the call.

The district court administering the decree that broke up the Bell System has also strongly endorsed billed party preference. In fact, Judge Green has ordered the Bell and GT&E companies to implement billed party preference as soon as possible. Unfortunately, Judge Green's orders put the Bell and GT&E companies in a predicament, a predicament that may defeat the billed party preference implementation no matter how hard we work at it.

The problem is that Judge Green did not, and we believe properly could not, order any pay phone operators other than the Bell and GT&E companies to implement billed party preference. This means that the large number of private pay phone companies are under no obligation to implement billed party preference for their pay phones, but billed party preference can really only work if it applies to all pay phones, regardless of who owns them.

There are few reasons for that. I would like to explain. First, if billed party preference is not mandated universally for long-distance calls from all pay phones, property owners will eventually choose to install private pay phones for which they can choose the long-distance carrier and earn extra commissions from the long-distance carrier. Property owners will replace the Bell and GT&E-

company owned pay phones with private phones so that they can earn those commissions.

After spending millions of dollars over the next few years to implement the billed party preference system to maximize consumer choice, the public pay phones owned by the Bell and GT&E companies will be removed by the property owners, and consumer choice of the long-distance carrier will disappear and the consumer will pay higher long-distance charges.

The second point here is that the consumers will suffer substantial confusion when they find that some pay phones, those owned by Bell and GT&E companies, automatically select the consumer's preferred carrier at the price he expects, while other pay phones automatically select some carrier chosen by the property owner.

Senate bills S.1660 and S.1643 provide some protection for consumers. These bills would allow consumers who make long-distance calls from pay phones, to select long-distance carriers by dialing special carrier codes. This proposal will certainly benefit those customers who are willing to memorize and dial the necessary code.

But special codes and special procedures do not take full advantage of technology and do not really meet the need for a user-friendly system in which the telephone system itself automatically selects the carrier which has previously been selected by the consumer to carry the call, and after all, that consumer is paying for the call.

We believe that Congress should require the FCC to determine expeditiously whether the billed party preference system for long-distance calling should be applied to all public pay phones and whether that is in the public interest.

If billed party preference is in the public interest, the FCC should require all pay phone owners, not just Bell and GT&E companies to implement it. If billed party preference is not in the public interest, the Bell and GT&E companies should be relieved of the obligation imposed by the court's order.

I would be happy to answer questions later, and I submit my full testimony for the record. Thank you.

[The statement and questions and answers follow:]

STATEMENT OF GRAY COLLINS, JR., EXECUTIVE VICE PRESIDENT, EXTERNAL AFFAIRS
BELL ATLANTIC CORP.

Good morning. My name is Gray Collins and I am Bell Atlantic's Executive Vice President for External Affairs. I would like to thank Chairman Inouye for holding these hearings and Senator Breaux and the other members of the Committee for the interest they have shown in the matter I'd like to talk about -- giving consumers the power to choose the long distance companies that will carry their calls made from pay telephones. These are the phones available to the public, for example, in airports, train stations, gas stations, and in other public places.

A large number of consumers make -- and pay for -- calls from these telephones every day. Most consumers using public payphones do not realize that when they make a long distance call from a public payphone, that call will usually be carried, not by the long distance company that they have selected, and at the price they expect, but by some company that has been picked by the owner of the property where the payphone is located.

The loser is the consumer making the long distance call from the public payphone. He ends up paying whatever the long distance company decides to charge, even though he never selected that company to carry his call. In short, the consumer loses the power to choose the long distance company that provides him the best service at the lowest price.

I am a great believer in the discipline of the marketplace, but as long as the property owner, and not the consumer, selects a long distance company to carry the consumer's calls, you just cannot expect the market to function properly.

Fortunately, there is a solution -- a system being developed by the telephone companies called "Billed Party Preference." With Billed Party Preference, long distance calls made from payphones which are billed to a telephone calling card or to a third number and collect calls -- will be carried by the long distance company selected by the customer who is paying for the call.

A number of consumer and industry groups and state regulators have recognized the value of Billed Party Preference for long distance calls and support its implementation at all public payphones. They include the Telecommunications Research and Action Center, the National Association of Regulatory Utility Commissioners, the regulatory commissions of Maryland and Tennessee, the Maryland People's Counsel, and the United States Telephone Association. The Telecommunications Research and Action Center, a consumer group, has described Billed Party Preference as "pro-choice, pro-competition and pro-consumer."

The district court administering the decree that broke up the Bell System has also strongly endorsed Billed Party Preference. He found that Billed Party Preference "most perfectly comports with the language and purposes of the [AT&T and GTE consent decrees]." Judge Greene ordered the Bell and GTE companies to implement Billed Party Preference as soon as practical.

This will be a demanding undertaking for the telephone companies. Implementing Billed Party Preference will require something like $150 million in investment nationally and will take

three to five years. Bell Atlantic, however, is committed to the task.

Well, you ask, what then is the problem? Unfortunately, Judge Greene's orders put the Bell and GTE companies in a predicament -- a predicament that may well defeat implementation of Billed Party Preference no matter how much we want it to work. The problem is that Judge Greene did not -- and we believe properly could not -- order any payphone operators other than the Bell and GTE companies to implement Billed Party Preference. This means that the large number of private payphone companies are under no obligation to implement Billed Party Preference for their payphones. But Billed Party Preference can really only work if it applies to <u>all</u> payphones, regardless of who owns them. There are two reasons why this is so.

First, if Billed Party Preference is not mandated universally for long distance calls from all payphones, consumer choice is doomed to disappear entirely from the payphone market. That is because property owners will inevitably choose to install private payphones, for which <u>they</u> can choose the long distance carriers -- and earn extra commissions from the long distance carriers. The result will be that property owners will replace Bell and GTE company-owned payphones, which will give consumers their choice of carriers, with private payphones. Thus, after spending millions of dollars to implement a Billed Party Preference system to maximize consumer choice, the public payphones owned by the Bell and GTE companies will be removed by property owners. The Bell

and GTE companies will lose their investments in Billed Party Preference -- and consumer choice for pay telephone calls will disappear.

Second, in the meantime, consumers will suffer substantial confusion when they find that some payphones -- those owned by the Bell and GTE companies -- automatically select the consumer's preferred carrier at the price he expects, while other payphones automatically select some carrier chosen by the property owner. That may be a carrier the consumer has never even heard of -- and who charges a price that is an unpleasant surprise to the consumer.

Senate Bills 1660 and 1643 pending before you provide some protection for consumers. These bills would allow consumers who make long distance calls from payphones to select long distance carriers by dialing special carrier codes. This proposal will certainly benefit those consumers who are willing to memorize and dial the necessary codes. But special codes and special procedures do not take full advantage of technology and really do not meet the need for a user-friendly system in which the telephone system itself automatically selects the carrier preferred by the consumer who is paying for the call.

We believe that the Congress should require the FCC to determine expeditiously whether implementation of Billed Party Preference for long distance calling from all public payphones is in the public interest. If Billed Party Preference <u>is</u> in the public interest, the FCC should require that all payphone owners -- not just the Bell and GTE companies -- implement it. If Billed Party Preference <u>is not</u> in the public interest, however, the Bell and GTE companies should be relieved of the obligation imposed by the court's orders to implement it solely for Bell and GTE public payphones.

We would be pleased to provide the Committee staff suggested language for inclusion in either of the bills currently before the Committee. I would be happy to try to answer any questions you may have.

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February 26, 1990

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Committee On Commerce, Science, and Transportation
Washington, D.C. 20510-6125

Dear Mr. Heyer,

The following is in response to Senator Gorton's questions on Billed Party Preference and the pending AOS legislation.

Will Billed Party Preference lead to a monopoly over zero plus access? What will prevent a monopoly by the local exchange carrier industry?

No. It appears that the Senator is referring to remarks made during the hearing at pages 134-35 of the transcript where it was alleged that Billed Party Preference would lead to a monopoly on operator services. Billed Party Preference will not do that. It will simply allow customers calling from a public pay telephone to select their own provider of long distance operator services.

Perhaps the best proof of this is not what Bell Atlantic says, but what others are saying. US Sprint, for example, is an interexchange carrier that provides operator services, and it vigorously supports Billed Party Preference. Sprint simply would not do that if Billed Party Preference could somehow lead to a Bell monopoly on operator services.

Bell Atlantic believes that the AOS industry will remain viable under a billed party preference environment by teaming up with interexchange carriers to provide operator service, or by issuing their own calling cards to enable the consumer to knowingly select the AOS to handle the call. The competition will be based on the end user selecting the carrier on the basis of service, quality and price, rather than the pay phone agent selecting the carrier based on commission payments. AOS's can also continue to serve the hotel, motel, hospital industry since Bell Atlantic's petition and the Court's order applies solely to public pay phones.

Sincerely,

A. Gray Collins, Jr.

Senator INOUYE. Thank you ver much. May I now call on Mr. Jeffrey Hanft.

STATEMENT OF JEFFREY HANFT, CHAIRMAN, AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Mr. HANFT. Good morning. My name is Jeffrey Hanft. I am the President of People's Telephone Company. We operate 7,000 competitive public pay phones in 17 states. 3,500 of those phones are located in the state of Florida.

I am also the President of the Florida Pay Telephone Association and the Chairman of the Board of the American Public Communications Council. The APCC represents over 100 providers of competitive public pay phones throughout the country.

I had some written comments that I was going to read to you this morning, but after hearing the testimony of people who have preceded me, I feel it is necessary and incumbent upon me to inform you about some of the questions that I have heard voiced by the committee.

Senator INOUYE. I can assure you that your prepared statements will be made a part of the record.

Mr. HANFT. Thank you.

First I would like to address comments made just prior to my testimony by Bell Atlantic on billed party preference.

We have heard that billed party preference will not be implemented for at least another three to five years. What we have not heard also is that by AT&T's own studies billed party preference will increase the cost of a call of at least 32 cents per call.

We also have not heard that billed party preference will increase connection time for a call from anywhere from 20 to 30 cents—excuse me, 20 to 30 seconds, I am sorry.

We talk about consumer choice disappearing. Consumers do have a choice now, by dialing their access code, they can reach the carriers that they prefer to reach to as long as the equipment is not blocking that choice.

We think that the Breaux bill goes very far to ensure that the equipment will no longer block access to all carriers. Our concern with the blocking provision is that on AT&T's preferred method of access the 10XXX method—and, by the way, AT&T is the only interexchange carrier or operative service company that requires that form of access.

The competitive pay phone owners have two basic problems, and I would like to give you a little bit of the history of how we started. We probably would not be sitting here today talking about operator services if when competitive pay phones went into competition with LEC pay phones, the LEC's and AT&T would have sat down with us, as we asked them to do many times, and arrange a revenue-sharing mechanism for all calls generated at competitive public pay phones.

The way things work now is when you go up to a competitive phone such as mine and dial a carrier to make a long-distance call, the carrier bills the end user, that end user pays the carrier, and the carrier receives revenue for the call.

The LEC, the local exchange company, also receives revenue because the carrier pays the LEC access charges.

There is only one element left out of the picture. The provider of the phone. I am the provider of that phone. I pay for the phone to be installed, I maintain that phone in good working order. I also pay at the present time anywhere from 40 to 75 percent, depending upon what state I operate in of my coin revenue to the local exchange company.

Senator INOUYE. This is the Commission?

Mr. HANFT. No, this is my local telephone bill. every time you put a quarter into my telephone call, I pay the local exchange company, depending on the tariff in that state X percent of that quarter. It ranges anywhere from five cents to 12 cents per call, plus a monthly line charge, and so it is substantial.

I am also put in the position of competing with the local exchange company because the local exchange company is the provider of the competitive pay phone equipment.

The local exchange company's phones, however, are part of the entire network and their costs are bundled into the cost of the network where they are guaranteed a rate of return of approximately 14 percent. We are not guaranteed that rate of return.

The local exchange company generally also has an intraLATA monopoly. That intraLATA monopoly means that anybody at one of my phones that wants to make an intraLATA call must go right to the local exchange company. The local exchange company does not pay me a commission for that call, but when the local exchange company has their telephone in a premise, they pay the premise owner a commission for that call.

I deliver the exact same call to them. The difference is that I am paying for the equipment and also paying for interconnection to the network. The local exchange company refuses to pay me. And so what we are dealing with here is a competitive imbalance. We do not have a level playing field because the LEC's and AT&T consistently refuse to pay pay phone owners commissions for calls we deliver to them, yet they were paying premise owners and we were competing for those premise owners' locations commissions.

We were forced to choose alternate ways of getting revenues from these calls, and we feel that if you create a law here to demand unblocking, to mandate unblocking, that it would be unconstitutional to not, at the same time, mandate that all of the interexchange carriers who receive this traffic, because we unblock our phones, pay us a commission for these calls—and let me tell you that they are currently paying the premise owners who have Bell telephones there the same exact commission or the same commission as I am asking for.

MCI is an AOS company. They are an interexchange carrier in the operator services business and if you go to an airport and the phones at that airport are presubscribed to MCI, MCI will pay the airport 25 percent of the total of that call.

If you dial from my phone 950–1022, which is how you get to MCI, MCI pays me nothing. The same with AT&T. They will pay a commission to a premise, but they will not pay a commission to a private pay phone owner unless he has a contract with them.

We currently do not block 1-800 or 950. However, a lot of our equipment was designed to not allow 10288 access because of fraud problems in order to update our equipment—and I heard the man from AT&T say it is a mere $300 to $7,000—and that might be true, it might be $300, but I represent owners of 100,000 phones, and $300 times 100,000 is a lot of money. We feel we must be compensated. If we are to upgrade that equipment, we want to upgrade that equipment, but we must get compensation in order to do that.

One other problem we have with the bill that we feel can be made stronger is in fraud protection. We deliver the call to MCI, AT&T or whoever. When they get it, it is up to them to get the proper billing information from their customer who is placing that call.

The problem we have on our pay phones is that Bell or the LEC's do not give us the same type of lines that they give for their own pay phones, and so it is possible to reach an AT&T operator from my pay phone and tell the AT&T operator, "Operator, I am sorry, I am having difficulty dialing this number, could you dial it for me?" and in certain instances the AT&T operator does not realize that that call is coming from a pay phone, and they will compete the call and then send the bill to the pay phone owner.

Let me tell you that in the last year and a half Southern Bell in the state of Florida has written off $1.2 million in pay phone fraud on my telephones alone. Fraud is a very serious matter for us.

Let me try to reiterate to you what our problems are with the bill. We support it, but we would just like to see two provisions made mandatory. One is compensation and one is fraud protection. Thank you.

[The statement follows:]

STATEMENT OF JEFFREY HANFT, CHAIRMAN, AMERICAN PUBLIC COMMUNICATIONS COUNCIL

My name is Jeffrey Hanft, and I am the Chairman of the Board of the American Public Communications Council (APCC), a national organization of competitive public communications providers. I am also the President of Peoples Telephone Company, headquartered in Miami, Florida. Peoples Telephone owns and operates some 7000 public pay telephones on a competitive basis in 17 states. I also serve as Chairman of the Florida Pay Telephone Association. I am testifying here today on behalf of the APCC, and I would like to thank the Subcommittee for extending to our group the opportunity to appear today in support of S. 1660.

The American Public Communications Council was formed in 1988, under the auspices of the North American Telecommunications Association (NATA), and comprises some 100 providers of competitive pay telephone equipment and services. Competitive public pay telephones -- i.e., those not provided by the local exchange telephone company -- are generally believed to represent about 10% of the roughly two million public telephones installed in the United States. APCC's primary purpose is to represent the interests and concerns of this emerging public communications industry at the national level. A profile of APCC is attached to this testimony. See Attachment A.

APCC and its members are committed to ethical and fair practices in providing public communications services. As a group directly affected by the controversies and negative practices which S. 1660 seeks to address, APCC recognizes the need for legislative action. As an organization of payphone providers, we view operator services as

just one of the necessary ingredients in the package of services which is made available to the public through the payphone. Our members want to ensure that all the suppliers of the ingredients in the payphone package, including operator services, provide low-cost, high-quality services and follow fair business practices. We support S. 1660 as a constructive approach to legitimate problems. We believe, however, that S. 1660 can and should be strengthened by the Subcommittee in two key areas of vital concern.

First, Section 4(b) of the bill appropriately recognizes the importance of fairly compensating competitive payphone providers for calls routed to carriers or operator service providers (OSPs) other than the carrier or OSP selected by the payphone provider. To be equitable and pass constitutional muster, however, this provision should be strengthened by clarifying that prescription of such compensation by the Federal Communications Commission (FCC) is mandatory. Second, the bill's existing provisions (Sections 4(a)(4)(B) and 4(a)(5)(C)) which recognize that "unblocking" payphones increases the risk of fraud should be strengthened. The bill should be amended to clarify that when calls are made from competitive public payphones to reach an interexchange carrier or OSP by dialing an access code, the payphone provider is not liable to pay for any such calls. Before discussing these issues in detail, I would like to convey APCC's perspective on the public communications industry as a whole, which forms the background for the suggested amendments.

Emergence of Payphone Competition as a Constructive Force

Six years ago, at the time of the AT&T divestiture, a competitive public pay telephone industry did not exist. Public telephone service was provided solely by the monopoly local exchange carrier (LEC), using "dumb" instruments which had no capability for offering advanced telecommunications services and which required remote support from the LEC's central office. Moreover, the LEC unilaterally decided where to install payphones, how many to install, and on what terms. If a location did not meet the telephone company's revenue criteria, the location owner either would not receive a payphone or was required to subscribe to and pay for a "semi-public" payphone.[1/]

Shortly after divestiture, technology was developed for a "smart" pay telephone instrument, containing sufficient computer intelligence to replicate and in some respects surpass most of the traditional pay telephone service functions with little or no LEC central office

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1/ There are a few locations where LECs may have placed a payphone for purely "public service" reasons. However, these phones represent a minute percentage of the LECs' approximately 90% market share of the installed payphone base. The LECs' general policy in serving unprofitable locations is to require subscription to "semi-public" service.

support. In 1984, the FCC authorized interconnection of this non-LEC provided public telephone equipment with the public switched network. Over the next few years, competitive public payphone service was authorized, subject to regulation, in virtually all states. For the first time, premises owners -- the owners of airports, hotels, truck stops, restaurants, convenience stores, government buildings, hospitals and other locations where payphones are installed -- had the opportunity to offer improved payphone equipment and services to the public based on direct knowledge of their customers' needs for public telephone service.

Currently, there are dozens of manufacturers and hundreds of vendors of payphone equipment doing business in the United States. Virtually all the pay telephone equipment used in this country is manufactured by American companies. This equipment may be sold or leased to the premises owner, or operated by a vendor under a multitude of arrangements. Payphone premises owners range from airports and convention centers, with dozens of payphones, to "mom-and-pop" stores, with a single phone each.

The competitive public telephone industry has matured considerably since interconnection of competitive payphones was first authorized in 1984. While many of these payphones continue to be owned and operated by the premises owners

simply as a adjunct to their primary businesses, the industry has evolved increasingly toward more and more participation by companies who view the provision of payphone service as their primary business. These competitive payphone providers have a strong incentive and capability to be highly responsive to the needs of payphone users. They generally handle coin collection, call rating and other operational and maintenance responsibilities for the pay stations they install. Many of these companies operate sophisticated computer-controlled networks to remotely monitor and service payphones at each location.

A key benefit of payphone competition has been to increase the availability of payphones to the public. Payphones are now available to the public in many places where payphones were not available before. This includes inner city locations that historically have been underserved due to vandalism and employee safety concerns. Now, premises owners who could not get payphones installed on reasonable terms by the local telephone company are able to do so with competitive alternatives.

In addition, competition has helped to ensure that payphones are conveniently placed and effectively maintained -- that payphone installations are tailored to the actual needs of the premises owner and its public patrons, not the

whim of the local telephone monopoly. Competitive payphones have the intelligence to signal the home office when a trouble condition exists. This technological advance, coupled with the willingness of competitive payphone owners to offer extended hours, even seven-day-a-week service capability, improves upon traditional maintenance standards. Under competition, a payphone that does not meet competitive standards will be quickly replaced by one that does. This competition also encourages the local exchange carriers to improve their own performance and responsiveness to the public.

Yet another positive result of payphone competition has been the development of new services and conveniences for callers -- such as voice messaging and access to multi-lingual operators, facsimile, electronic directory, and other "information age" services. Competitive payphone vendors also have been pioneers in the acceptance of commercial credit cards (e.g., VISA, MasterCard, American Express, etc.) at payphones. This service is especially valuable to tourists and visitors from other countries, who may not have access to telephone company "calling cards." In addition, use of credit cards for long distance calls can offer consumers significant savings over telephone company calling card rates. Rates for other public payphone services are also beginning to reflect the same trends and experience as

occurred in the competitive long distance arena, where there have been significant rate decreases.

In my own company, for example, we recently dropped the price of a local call in Florida from 25 cents (charged by telephone companies) to 20 cents. In addition, our coin-paid toll calls are set at rates 10% below dominant carrier rates and we give away the second minute of every coin-paid call for free. We also offer automatic message delivery service and accept commercial credit cards. This capability is especially significant in a state like Florida, where tourism is such an important part of the economy.

In summary, the APCC represents an emerging new technology based industry that is striving to make public communications more convenient and economical for all users. It is important to recognize that what has already been accomplished by this industry has been achieved in the face of a gross imbalance between the regulatory treatment of LEC payphone operations and non-LEC competitive payphone providers. While we recognize that operator services legislation is not the most appropriate place to correct all these problems, we urge the Subcommittee, in crafting this important legislation, to avoid aggravating current competitive inequities between LEC and non-LEC payphones.

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APCC Supports S. 1660

APCC supports S. 1660 as a constructive remedy for excessive charges and unfair practices in the public communications industry. In our view, S. 1660 takes an equitable approach by imposing the same requirements on all operator service providers.

From APCC's perspective, operator services for a competitive public payphone can be supplied by either a "traditional" or "alternative" OSP, as long as the services are available on terms that are fair and reasonable to the payphone provider and to the calling public. Early in the development of the competitive payphone industry, payphone vendors recognized the need for caller access to operator services, and sought to obtain such services from local exchange carriers and AT&T with appropriate revenue sharing arrangements. At that time, it proved impossible to negotiate reasonable arrangements with those carriers. The LECs were also in the pay telephone business and apparently believed it was in their interest to use the bottleneck local exchange monopoly to disadvantage the new pay telephone competitors. Revenue sharing would be offered to premises owners with LEC payphones but not to competitive providers or premises owners. For its part, AT&T apparently believed it had a monopoly on operator services and that it

was unnecessary to bargain or negotiate with competitive payphone providers since the competitive providers would ultimately have to deal on AT&T's terms.

For these reasons, competitive payphone providers welcomed the emergence of competitive operator service providers. Nonetheless, APCC fully recognizes and understands that the emergence of competition in operator services has been accompanied by certain abuses and unfair practices. Those practices are wrong and must be stopped, no matter what their supposed justification. At the same time, it is necessary to recognize that competitive OSPs have had to overcome and still face tremendous adversity -- not just the natural hazards of a competitive marketplace, but also the barriers artificially imposed by the discriminatory practices of many LECs and the entrenched dominant operator service provider. In order to address the problem at its core, further attention must be paid by regulators to the manner in which dominant carriers drive up the costs of competitive OSPs -- who would likely charge consumers less if they could.

Despite these handicaps, competitive OSPs have not only succeeded in making major progress toward imposing marketplace and competitive discipline on the LECs and AT&T; but have also facilitated new services not formerly

available, such as the multi-lingual operators, voice messaging services, and commercial credit card features previously discussed. In addition, many competitive OSPs provide full operational support to competitive public payphones, including trouble reporting, fraud screening, and coin refund services, where these services were previously unavailable, or were provided by LECs in ways that disparaged competitive payphone providers.

While APCC fully recognizes the contribution of competitive OSPs, APCC also understands that the public should not have to endure undue dislocation in the name of nascent competition. In the final analysis, from the perspective of a competitive payphone provider, an operator service provider is just another supplier of an ingredient in the total public communications package APCC members are trying to deliver. In today's environment, a competitive payphone provider must choose an OSP based on who offers the best package of services. While many competitive payphone providers use competitive OSPs, others arrange for operator services to be provided by a "traditional" carrier such as AT&T. Many use both competitive OSPs and AT&T. APCC members, who are trying to bring a variety of advanced services to the public, need to be assured that all the suppliers they use to deliver those services (including operator services) to the public provide the lowest cost,

highest quality services and are fair in their public and corporate dealings. It is for this reason that, as stated above, APCC supports the principle embodied in S. 1660 that all OSPs should be subject to the same requirements.

APCC also agrees with the major premises of the legislation that many of the recent problems in the operator services industry are remedied by ensuring that users of public telecommunications services (1) are fully informed as to who will be the operator service provider for a call from a particular telephone; and (2) based on that information, are able to make a choice to use a different provider of their own preference if not completely satisfied with the primary operator service provider for the pay telephone. APCC therefore supports S. 1660's requirement that consumers should be given reasonable access to their carrier of choice from any telephone dedicated to public use.

As stated, APCC members want to provide all end users with the opportunity to access their carrier of choice. Two major issues, however, must be resolved if a viable system of payphone access is to emerge. These issues are recognized and partially addressed by S. 1660 as currently drafted. We believe that the bill can be greatly improved by strengthening the provisions of S. 1660 in the areas of payphone compensation and fraud protection.

Compensation for Competitive Payphone Providers

From both a business and public interest perspective, it is a fundamental requirement that providers of public payphone services must be reasonably compensated for the use of their equipment to make telephone calls. Under the current system, however, when a consumer uses an interexchange carrier's access code, such as a 10XXX, 950-XXXX, or 800 number, to access the interexchange carrier from a competitively provided public payphone, the owner of the payphone ordinarily receives no compensation for the traffic generated. Unless the payphone provider assesses a charge directly on the end user -- an alternative which generally is as impractical as it is unpalatable -- these calls are typically allowed as free calls. At the same time, all the other participants earn revenue on these calls. The interexchange carrier, of course, earns revenues for all calls it carries. The local exchange carrier earns revenue from the access charges assessed on these calls. Indeed, the access charges earned by the LEC on calls from non-LEC payphones include a contribution to the cost of maintaining the LEC's own payphones, which are included in and automatically funded by the LEC's monopoly rate base. However, the competitive payphone provider, who must pay for the payphone equipment and its installation and maintenance, as well as all recurring central office connection and line charges --

and whose phone is made unavailable for revenue generating calls -- receives no compensation for the traffic generated and public access provided on access code calls. In fact, a competitive public payphone provider is the only provider of a telephone dedicated to public use that is uncompensated when the telephone is used by a consumer to dial an inter-exchange carrier.

The need for compensation is becoming more acute as ever growing numbers of consumers are placing their long distance operator assisted calls by dialing carrier access codes. The surge in carrier access code dialing is being fueled by AT&T's multi-million dollar mass media advertising campaign requesting callers to dial 10288-0 to reach AT&T. In addition market penetration by both MCI and Sprint is increasing, and both carriers rely on carrier access dialing. Sustained evolution toward proprietary card billing mechanisms intensifies the need and justification for a systematic method to compensate payphone providers who make access possible to the public through their facilities.

As earlier discussed, APCC fully agrees that callers should be able to access their carrier of choice from any public payphone. However, principles of fair play as well as basic economics require that owners of competitive payphones be compensated for the use of their facilities.

Indeed, I am advised by counsel that failure to mandate fair compensation for payphone providers needlessly raises serious due process and "taking" concerns under established legal principles. Moreover, the absence of compensation greatly aggravates the existing competitive imbalance between LECs and competitively provided payphones. Again, while competitive providers earn no compensation on these access code calls, the LECs earn access charge revenue on every interstate toll call from their competitors' payphones, and part of this revenue contributes to maintaining the LECs' own payphones.

Section 4(b) of S. 1660 begins to address this concern, but falls somewhat short of the mark. Under S. 1660, the FCC must conduct a rulemaking to address OSP practices. Section 4(a) prescribes certain minimum standards that the rulemaking must address. Section 4(b) directs the FCC, in the rulemaking which must be conducted under S. 1660, to "consider the need" to prescribe compensation for competitive public payphone providers for routing calls to carriers other than the designated operator service provider for the payphone. While this provision begins to address APCC's concerns, it goes only half way. If carrier access is to be mandatory, APCC believes that a compensation plan for competitive public payphone providers should also be mandatory as part of the minimum standards prescribed in

Section 4(a) of the bill. To accomplish this, APCC proposes to move the substance of Section 4(b) into a new subsection of Section 4(a), as shown in Attachment B to this testimony. This change would not only prevent competitive payphone providers from bearing a disproportionate share of the burden of interexchange carrier access from public payphones; it would also be one small step to redress the imbalances that continue to exist between LEC and competitive public payphone operations.

This method of fairly compensating payphone providers should impose no disruption on consumers. Callers will still be able to access their carrier of choice without depositing coins or inserting credit cards. All a caller will need to do is enter the access code (e.g., 10XXX, 950-XXXX) for the carrier he or she desires. The cost of access by the consumer would be derived from revenue for the call, for example, as in the existing mechanism of carrier-to-carrier access charges. The OSP would directly or indirectly through the LEC's access charge mechanism compensate the competitive payphone provider without any imposition on or inconvenience to the consumer. This compensation simply recognizes that public "access" begins at the public telephone instrument and not from the LEC's central office switch.

The precise method and level of compensation can appropriately be determined by the FCC. However, in S. 1660, Congress is instructing the FCC to implement a specific set of regulatory requirements and placing a time limit on the FCC for adopting those requirements. Since payment for access to carriers is a critical component of the carrier access regime Congress is implementing, Congress needs to speak with equal clarity and specificity in order to ensure that a mechanism for fair compensation is implemented within the same time limits as other provisions of the bill. The attached revision language accomplishes this goal.

Fraud Protection

The second competitive payphone issue that is directly raised and should therefore be addressed by S. 1660 is the issue of fraud. No matter what the level of sophistication of the computer processors within a competitively provided payphone, these phones are vulnerable to being defrauded, and the vulnerability to fraud increases dramatically when the phone is configured to allow use of carrier access codes, in particular 10XXX. Simply put, there must be assurances that the local exchange carriers will offer, and the interexchange carriers will receive and utilize, call screening information that allows the carriers to

recognize codes that prevent billing to the payphone line through fraudulent means. Adequate protection against fraud is an essential ingredient for any successful interexchange carrier access scheme. This protection is for the benefit of both the competitive payphone providers and the general body of ratepayers, who will ultimately pay for excessive losses from fraud.

Fraud is of major concern to competitive payphone providers for a very simple reason. On the one hand, competitive public payphones, like all payphones, are offered for the use of any transient members of the public. A payphone provider has no significant control over who has access to the payphone. On the other hand, unlike LEC payphones, competitive public payphones are required to interconnect with the public network on essentially the same basis as other subscribers who can control access to their phones; they are required to use regular business lines. Thus, competitive payphone owners can be billed for calls originating at the payphone in the same way as any other subscriber.[2/] This combination of circumstances make

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2/ By contrast, LEC public payphones do not have "billable" numbers. The premises owner for a LEC public payphone is not required to subscribe to the line, and thus, is not billable for any fraudulent public payphone calls.

competitive payphone providers particularly vulnerable to fraud. There is virtually no control over who has access to the phone, yet there is tremendous exposure to being billed for fraudulent calls.

When competitive payphones can be used to reach operator and long distance services by caller-dialed access codes, there is a substantially increased opportunity for calls to be fraudulently billed to the payphone itself instead of the caller. The danger is especially great when the "Feature Group D" (10XXX) access code is used. When a private business or residence telephone is used to reach a particular operator service or interexchange carrier by dialing a 10XXX access number, the carrier automatically receives information identifying the telephone number for the business or residence, known as automatic number identification (ANI). This is very useful in the private telephone context, because it enables the carrier to bill the call to the originating line number, which is likely to be the number of the party that should be paying for the call.

Ironically, this very feature of 10XXX dialing -- an automatic capability for billing the originating line number -- which makes it an ideal "equal access" vehicle for the business or residence, make 10XXX very dangerous for providers of public payphones. Public payphones require a

foolproof means of avoiding billing to the originating line. When 10XXX calls are made from a competitive public payphone, there is a grave danger that the payphone provider will be billed by the interexchange carrier or operator service provider, and will have no ability to locate the responsible party for compensation. To prevent this, it is necessary for the local exchange carrier to "mark" the payphone line so that when the interexchange carrier or OSP receives the "ANI," it also receives a code indicating that the call requires further screening before it can be completed and billed. In addition, the interexchange carrier or OSP must recognize the coded information and act on it by either screening or terminating the call. These steps are not uniformly taken today by either local exchange carriers or interexchange carriers. When carrying access-code initiated calls, therefore, competitive payphone providers are at considerable risk of being billed for fraudulent or unintentionally completed calls, with no valid recourse.

At the same time, APCC understands there to be no technological obstacle to transmission of this coded line information by the local exchange carrier. The capability to transmit a screening indicator already should be in place as part of the "equal access" network. However, payphone providers by themselves cannot ensure that the exchange and

interexchange carriers actually use this technology effectively to screen out fraudulent calls.

Sections 4(a)(5)(A) and 4(a)(5)(B) of S. 1660, respectively, require all new and embedded equipment to be capable of recognizing all carrier access codes, including 10XXX. Section 4(a)(5)(C) directs the Commission to take all steps the Commission considers necessary to prevent undue risk of fraud to competitive payphone providers. Again, this provision is a desirable step but does not go far enough. An amendment that simply relieves competitive payphone providers of liability for caller-initiated access code calls is the most effective way to address this problem. This can be accomplished by adding a new subsection to Section 4(a), as shown in Attachment C. This amendment would shift to the LECs and IXCs, the parties who are best able to address the issue, the burden of ensuring that adequate screening information is available and used.

To the extent a competitive payphone provider complies with S. 1660's carrier access requirements, the risk of fraud is properly placed with the carriers -- the LEC and the OSP -- who between them can transmit and process fraud control information. Each can reduce the exposure to fraud by using available technology and systems that are already developed to reduce fraud. This approach should not be

burdensome to either the LEC or the OSP. The LEC should already be transmitting the necessary screening information as part of its deployment of equal access facilities. Similarly, carriers subscribing to equal access should have facilities in place to receive the information. In any event, either can decline to fully implement these systems and choose to bear the risk of fraud instead if it better suits their business objectives.

Conclusion

In summary, APCC supports S. 1660, and urges that it be amended to strengthen its approach to the legitimate issues of both public interest and industry concern outlined above. The FCC should be required to prescribe reasonable compensation for competitive payphone providers who make equipment available for public use and route revenue producing traffic to carriers. In addition, the responsibility for taking measures to prevent fraud protection in connection with access code calls should be clarified as discussed. With these amendments, S. 1660 will effectively promote the goals of high quality and low cost public communications services for the nation's consumers.

WB/RFA/01B.020

Senator INOUYE. Do you happen to have any suggested legislative language?

Mr. HANFT. Yes, in my testimony that we have submitted we have handed you two amendments which would change that language.

Senator INOUYE. We will study that, sir.

Mr. HANFT. Thank you.

Senator INOUYE. Ms. Easterling.

STATEMENT OF BARBARA J. EASTERLING, EXECUTIVE VICE PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

Ms. EASTERLING. Thank you. The Communications Workers of America represents thousands of operators who are employed by AT&T, the Bell operating companies and other telephone carriers. Our union prides itself on its extensive activity for many years in consumer matters, since we believe that our members are also consumers from Middle America.

CWA is here today in full support of S. 1660 and S. 1643, legislation which directs the Federal Communications Commission to adopt the rules and tariffs covering the relatively new alternative operator services or "AOS."

We commend Senator Dixon on his introduction of S. 1643, which would impose regulatory criteria to remove any advantages to be derived by an AOS provider in the use of "splashing" or "blocking."

However, we are confident that Senator Breaux's legislation, if enacted, would be a sufficient message to the Commission to address the splashing and blocking problems in the rule-making to be convened.

Where true competition exists, the buyers are able to understand all terms and conditions and prices and then make their informed decisions.

In the instance of AOS, the fact that 4,000 consumer complaints have been filed at the FCC as of late January shows the ideal conditions of a truly competitive market are far from reality.

The Commission's AOS rules issued last February appear not to have had enough strength to curb AOS abuses, since we learned that another 2,000 complaints have been filed in the last year.

It should be noted that these are the most complaints ever received by the FCC on any single issue. We think the Commission lost its opportunity last year to impose effective rules on AOS providers to stem the many complaints, complaints by customers of the impossibility of reaching the 800 numbers given by AOS companies for inquiries, and complaints that they were totally unaware that such numbers even existed.

Many users complained that they had no intention of using toll carriers other than those of their choice and, of course, the overwhelming complaints were based on the sizeable overcharges.

Although I could provide you with a variety of complaints in all areas, let me just cite one. On three calls made by an unsuspecting customer in Florida and California, they were charged a total of $22.51 by the AOS company. The comparable AT&T toll would have been $8.86.

In reviewing the AOS matter, the subcommittee certainly needs to ask if good public policy allows consumers to be open to depredation in a supposedly competitive marketplace.

In 1988 the FCC adopted a very narrow view of the matter using the enforcement branch of the Common Carrier Bureau to enforce the order. The reason we support the pending legislation is to provide for the Commission to give the full due process of rule-making and full opportunity for public comments.

Because AOS complaints have doubled since we testified before the House and are still being received at the enforcement branch, we must conclude that last year's AOS order was insufficient to reach into and correct the problem.

We were pleased this morning to hear the FCC testify that it intends to convene a rule-making.

Let me conclude by advising this committee that CWA is supporting several State level efforts in legislatures and utility regulatory agencies to impose comparable intrastate consumer protection rules on AOS providers since the legislation under consideration today covers, of course, only federal interstate jurisdiction.

Thank you, Mr. Chairman.

[The statement follows:]

TESTIMONY OF
BARBARA J. EASTERLING, EXECUTIVE VICE PRESIDENT
COMMUNICATIONS WORKERS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS
OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
FEBRUARY 7, 1990

The Communications Workers of America (CWA) fully supports legislation to correct certain consumer problems associated with provision of operator services by "alternative" carriers; we believe legislation is required to ensure the achievement of a truly competitive marketplace.

Legislation under consideration today (S. 1660 and S. 1643) directs the Federal Communications Commission (FCC) to adopt rules and tariffs covering the relatively new Alternative Operator Services, or "AOS." The very short history of AOS shows the lack of a truly competitive environment.

Although identical in most respects, the two AOS bills contain key differences. S. 1643, offered by Senator Breaux and others, is the same as H.R. 971 as passed by the House last September. S. 1660, sponsored by Senator Dixon, would underscore the need to curb the anti-consumer practices known as "call-splashing" and "call-blocking." S. 1660 would impose regulatory criteria which would remove any advantages to be derived by an AOS provider in the use of "splashing" or "blocking."

In our view, the enactment of AOS legislation will be a sufficient message to the Commission to address the

"splashing" and "blocking" problems in the rulemaking to be convened. We believe Senator Dixon has done a real service by calling attention to these problems.

Where true competition exists, the buyers are able to understand all terms and conditions and prices, and then make informed decisions. In the instance of AOS, the fact that 4,000 consumer complaints had been filed at the FCC as of late January shows the ideal conditions of a truly competitive market are far from reality.

CWA represents many thousands of operators employed by AT&T, the Bell Operating Companies and other telephone carriers. The union has been active for many years in consumer matters, since our members also are consumers from "middle America."

The Commission's AOS rules, issued last February 27, appear not to have had enough strength to curb AOS abuses, since we have learned another 2,000 complaints have been filed in the last year. We think the Commission lost its opportunity last year to impose effective rules on AOS providers, to stem the many complaints.

We have seen many bills from AOS providers showing charges considerably higher than those of the conventional carriers, such as AT&T, MCI, U.S. Sprint and the Bell companies. Let me cite one example: A customer made three calls while traveling in California and Florida; the AOS company charged $22.51 for those calls. The comparable AT&T tolls would have been $8.86. On one

call, the overcharge amounted to $10.06.

In preparation for House hearings early last year, my staff and I examined many AOS complaints, making copies of about 100 for reference. Many complaints have some common factors of key interest to consumers.

Customer inconvenience is typical of many of the complaints at the FCC. Many customers complained of the impossibility of reaching the "800" numbers given by AOS companies for inquiries and complaints.

Many complaints noted that the users were not aware that AOS carriers were providing the service; many users complained that they had no intention of using toll carriers other than those they had selected several years ago in the "pre-selection" process resulting from the AT&T breakup. Many complaints were based on sizeable overcharges, compared with costs of using the conventional carriers.

In reviewing the AOS matter, this Subcommittee certainly needs to ask if good public policy allows consumers to be open to depredation in the supposedly competitive marketplace.

In mid-1988, two consumer groups, Telecommunications Research and Action Center (TRAC) and Consumer Action (CA), filed complaints against five major AOS providers, asking the FCC to revoke the AOS carriers' operating authority unless they had taken specified actions to come under several sections of the Communications Act.

We believe the Commission in 1988 should have convened a proper rulemaking proceeding, to give all interested parties the opportunity to take part in the case. The FCC instead adopted a very narrow view of the matter, using the enforcement branch of the Common Carrier Bureau to fashion the order. A key reason we support the pending legislation is to require the Commission to provide the full due process of rulemaking and full opportunity for public comments. Since the AOS complaints have doubled since we testified before the House, and are still being received at the enforcement branch, we must conclude that last year's AOS order was insufficient to reach into and correct the problems.

Inasmuch as the Commission helped foster the advent of AOS on the consumer scene, we would expect the agency to be opposed to a legislative approach to curb the practices of these providers now classified as "non-dominant" carriers. CWA believes the AOS providers in many instances have become "dominant" and should be so categorized.

An AOS carrier becomes "dominant" in its making a choice for a user in a hotel or hospital room, in a college dormitory or at an airport.

In any rulemaking, CWA will ask the Commission to act in the following areas:

(1) Rates. AOS firms' rates should be "capped" at or near the rates currently charged for operator services provided by the "dominant" inter-exchange and local exchange common carriers.

(2) Notice to Users. AOS firms and the "host sites" to which they provide services must be subject to Commission rules to ensure that end-users know the prices, terms, conditions and identities of those offering to help route their telephone calls. Notice that includes "tent cards," stickers and pre-charge announcements by operators, must be such that the end-user is fully informed about the service to be provided.

(3) AOS Customer. The Commission should ensure that its rules clearly equate the customer of an AOS firm to the end-user (at a payphone or in a hotel or hospital room). As the AOS phenomenon has come on the scene, the "host site" is the AOS company's customer; the end-user is a degree removed from the contract transaction, a transaction involving one party not clearly subject today to the common carrier provisions of the Communications Act.

(4) Contracts Filed. "Traffic aggregators" such as hotels, hospitals and airports become active participants in the telecommunications business when they use AOS firms. By routing an end-user's telephone message via an AOS firm or a toll or an exchange carrier, the aggregator takes on attributes of a common carrier, which should lead to coverage under the Communications Act's Title II. Contracts between AOS firms (themselves carriers) and aggregators should be filed publicly as set out in Section 211 of the Act.

(5) User Choice. The end-user must be directly and immediately connected to the carrier of choice by the AOS' action to "hand-off" the call, quickly and without charge. The end-user should not be required to hang up and then re-dial on a "10222" or "10288" or "950-XXXX" or other access code to reach the carrier of choice. Such a process entails extra time and in many cases, an added telephone charge for local exchange message service, such as from a hotel room or payphone. The FCC has suggested that operating procedures of AOS carriers should be so modified.

(6) Commission Authority. As noted in point 4 above, traffic aggregators become part of the communications process when they are actively involved in providing more than facilities to users. The Commission's rulemaking should take note of such active role of hotels, hospitals, airports and other aggregators and place them under coverage of the Communications Act, to promote interstate commerce. In addition, the rulemaking should remove from aggregators the power to restrain trade.

In the Commission's order, the practices of "call-splashing" and call-blocking would be ended to some extent. Senator Dixon's bill, S. 1643, addresses these matters; we urge the Subcommittee to examine these issues to guide the Commission in the rulemaking processes mandated by the legislation.

Since the hotel or other host site is becoming an agent in the process of supplying telecommunications in interstate commerce, we believe such host sites should be clearly covered under the provisions of the Communications Act. In the rulemaking process following enactment of this AOS legislation, CWA will urge the Commission to give such specific directions to hotels and other host sites.

Finally, CWA is supporting several State-level efforts in legislatures and utility regulatory agencies to impose comparable intra-state consumer protection rules on AOS providers, since the legislation under consideration today covers only the Federal inter-state jurisdiction.

Senator INOUYE. Thank you very much.
Mr. Rowland.

STATEMENT OF ROBERT A. ROWLAND, PRESIDENT, CAPITAL NETWORK SYSTEM, INC.

Mr. ROWLAND. Thank you, Mr. Chairman.

My name is Robert A. Rowland. I am President of Capital Network System, Inc. On behalf of myself and on behalf of my company I would like to thank the subcommittee for inviting me to testify at today's hearing on the frozen operator services.

CNS is an interexchange carrier headquartered in Austin, Texas. Our primary business is the provision of operator-assisted long-distance telephone services.

Since our commencement of service in 1988 we have constantly endeavored to provide consumers with dependable high quality service at fair prices. It has always been our policy to operate our business in full conformance with all applicable federal and state regulatory requirements. For example, we comply fully with the requirements established by the FCC in its 1989 TRAC decision, even though CNS was not a named defendant in that proceeding.

We are especially proud of the fact that CNS has never been the subject of a complaint filed with the FCC or any state utility commission.

CNS endorses the pro-consumer, pro-competition goals of S. 1660 and generally supports its passage.

However, in considering operator service legislation, I urge the subcommittee to be mindful of the fact that the operator services marketplace is not a level playing field. AT&T continues to dominate the operator services market, and it continues to enjoy several significant operational and economic advantages over its much smaller competitors.

I recognize that much of the impetus for operator services legislation has been caused by frustration over rates.

It is true that operator service providers sometimes charge rates that are higher than AT&T's or the Bell operating companies for intraLATA calls. Some of those rate differences are a natural by-product of an emerging competitive marketplace.

Whenever a monopoly service or product becomes subject to competition, there will be a range of products and services offered at various prices, some higher than the dominant providers, some lower. Over time the marketplace will gravitate to those products and services and offer consumers the greatest value.

The main reason that competitive operator service providers' prices are sometimes higher than AT&T's is that their costs are always higher. This results from the discriminatory manner in which many local telephone companies treat us as compared with how they treat AT&T.

This is especially true regarding provision of billing and collection services and access to validation data bases. These are central services. The need for these services is described more fully in my written statement.

I want to emphasize that the information necessary to provide these essential services is in the exclusive possession of the local

exchange telephone companies and is derived from their bottleneck control of their local telephone networks.

CNS jointly with the Competitive Telecommunications Association has filed a petition with the FCC asking that all local exchange telephone companies be required to provide billing, collection services and access to call validation data to all interexchange carriers. The FCC has not yet ruled on that petition.

The unwillingness of many independent local telephone companies to provide these essential services to CNS prevents us from being able to collect revenues for calls charged to calling cards or to telephone numbers issued by those companies. As a result, we are unable to complete over 20 percent of our calls. This deprives us of substantial revenues, increases our costs and inconveniences consumers.

I respectfully urge this subcommittee to recognize the significant disadvantages to which CNS and other operator service providers are subject as a result of their denial of essential bottleneck services by many telephone companies.

I would like to address the remarks of Senator Exon, if I may. The Lincoln Telephone Company that he spoke of is one of some approximately 1,400 companies in the United States that do not have any agreements with anybody except AT&T. I think Mr. Hines said well, it is up to us to get agreements with these companies. We cannot get those agreements, and that is why we filed our petition.

The 20 percent of calls that we send AT&T—and that is what we do when we cannot complete these calls and bill them, we send them to AT&T—we do not get compensated for those either, and we would like to be compensated because they cost us a great deal of money. We not only lose revenue, but the costs of bringing it into our switch, send it back to AT&T is very, very substantial.

We are experiencing with one company approximately on a yearly basis $1 million in lost revenue. Sending those calls that would give us $1 million in revenue to AT&T costs us in out-of-pocket costs about $300,000. That is not much money to AT&T, but to our little company it is a lot of money, and it substantially impacts the cost of our charges that we have to pass along.

Mr. Hines mentioned that his rates were—they were cost-based, I think.

I would like to point out that AT&T has some 1,800 different rates around the United States. Many of them if not most of them are way below cost, and this is one of the problems with the perception of the industry. This is a carryover from monopoly position which they enjoyed for so many years where they shifted their rates around, their income around.

What that means by charging less per call is that someone else is paying more. Since divestiture and competition started, I believe AT&T has dropped its rate on one plus some 40 percent. They are still substantially higher than the competitors. Many companies are way below their rates, demonstrating that they have a substantial margin.

I would submit to you that in areas where they have traditionally had tremendous profit margin, they use those profits and cross-subsidize areas like 0 calls where they are operating below cost.

I can give you one example. Out of 1,800 rates, there are many naturally, depending upon the length of call and other factors. But in Texas where we operate primarily, AT&T has one rate of three cents a minute. For that three cents a minute charge to the consumer, they pay Southwestern Bell 20 cents per minute, regardless of time of day, no volume discounts, so they are losing on that call 17 cents. And this is just one example of how they are way below cost. And when you compare a rate of our call with that call, it is going to look quite different, but it has nothing to do with cost.

The Lincoln problem of Senator Exon would be solved if the FCC would act on our petition that is pending there.

Thank you very much.

[The statement follows:]

STATEMENT OF ROBERT ROWLAND, PRESIDENT, CAPITAL NETWORK SYSTEM, INC.

My name is Robert A. Rowland. I am President of Capital Network System, Inc. (CNS). CNS is an interexchange telecommunications common carrier headquartered at Austin, Texas. CNS' primary business is the provision of operator-assisted long distance telephone services.

CNS was founded in 1987 and became operational in 1988. Currently, CNS provides its services from locations in five states. It completes calls for consumers of its services throughout the United States and throughout the world. Its operator center is located at Austin, Texas, it employs 105 operators who are able to provide assistance to callers in more than twenty languages.

CNS has introduced certain important features and enhancements to its operator services. In addition to an extensive multilingual operator program, CNS now offers a voice messaging service and will soon be providing concierge services and other information services. At CNS, we are especially proud of our emergency call handling service which we consider to be among the most sophisticated and most effective in the industry. Attached to my testimony as Exhibit 1 is a description of that program and a letter from the Federal Aviation Administration recognizing a situation where that program was critical to a rescue effort.

Since its inception, CNS has endeavored to provide consumers with reliable, high quality operator-assisted calling services at

fair prices. CNS complies with the requirements established by the Federal Communications Commission (FCC) in Telecommunications Research and Action Center v. Central Corporation, et al. 4 FCC Rcd 2157 (1989), even though CNS was not a named defendant in that complaint proceeding. In fact, CNS was complying with each of the practices mandated in the FCC's TRAC decision prior to that decision. CNS is extremely proud of the fact that it has never been the subject of a complaint filed with the FCC or any state public utilities commission.

CNS endorses the goals of S. 1660 and generally supports its passage. However, CNS urges this Subcommittee to take a balanced view of the telephone operator services industry and to recognize that those interexchange carriers providing operator-assisted calling services in competition with AT&T -- the dominant provider of operator-assisted interexchange services -- are significantly disadvantaged vis-a-vis AT&T which continues to enjoy many benefits of its predivestiture partnership with the local exchange telephone industry. The consumer choice and pro-competitive goals of S. 1660 will not be attained until those circumstances are rectified.

I realize that much of the impetus for operator services legislation has been the result of consumer frustration with high rates. In considering this legislation, I urge the Subcommittee to bear in mind that the reason that some operator service providers charge higher rates than AT&T is that their costs are higher than AT&T's. The higher costs are caused in large part by

the refusal of local exchange telephone companies to provide essential services to non-AT&T operator service providers. Where those essential services are made available to non-AT&T carriers, we believe that they are provided at higher prices than those charged to AT&T. In short, we perceive that we are treated by the LECs -- BOC and independent -- not as major customers of their services, but rather as their intraLATA competitors.

Further, based on CNS' experience in Texas, many of AT&T's rates with which we compete are below cost. In those situations, consumers of other AT&T services are inevitably forced to pay higher rates to cross-subsidize AT&T's below cost operator-assisted calling rates.

Specifically, I note that the bill would direct the FCC to initiate a proceeding to establish rules to govern the provision of operator-assisted calling services by operator services providers. Just as the proposed legislation would direct the FCC to promulgate rules governing the provision of operator services, I believe that the Commission should also address the existence of several critical inequities in the treatment of operator services providers by the local exchange telephone industry. In this regard I would like to bring to the Subcommittee's attention the existence of certain circumstances which cause CNS and all other interexchange carriers -- except AT&T as a result of its historic monopoly position -- to experience increased costs, deprives them of substantial revenues and, most importantly, impedes their ability to provide service to consumers.

Specifically, I am talking about the refusal of many of the nation's local exchange telephone companies to make available to CNS and to all other interexchange carriers (except AT&T) billing and collection services. Many of those same telephone companies also refuse to make available to CNS access to their data bases necessary to validate calling card numbers and billed telephone numbers. These services are essential to our ability to serve consumers. The disparate and inequitable treatment of CNS and other operator services providers by the local exchange telephone companies vis-a-vis their treatment of AT&T is a remaining vestige of the monopoly telecommunications environment which existed prior to divestiture and equal access. Elimination of these inequities combined with the regulations and standards required under S. 1660 would promote operator services competition and increase consumer choice. Moreover, it would reduce the price to consumers for operator-assisted services by reducing the costs of providing service.

BILLING AND COLLECTION - THE NEED

Long distance calls can be initiated in two ways -- either direct dialed or operator-assisted. A caller can place a direct-dialed call by dialing the digit "1" plus the area code and the called telephone number. If the caller wishes to use an interexchange carrier other than the carrier to which the calling telephone is presubscribed, the caller must first dial a five digit access code. In either case, the caller dials the called

number directly without intervention of an operator. Most calls dialed from a caller's residence or place of business are direct-dialed calls. Direct dialed calls can be billed either by the interexchange carrier or by the local exchange telephone company (LEC) which provides local exchange telephone service to the calling location.

Operator-assisted calls require the intervention of an operator to complete the call. They are initiated by dialing the digit "0" before the area code and called telephone number. Operator-assisted calls typically are not billed to the calling telephone. They are either charged to a calling card issued by a local telephone company or an interexchange carrier or to a telephone number, either the called telephone number (a collect call) or a third party number. Such calls appear on customer bills rendered by the local exchange telephone company serving the billed telephone number. 1/

Where an interexchange carrier has a direct customer relationship with callers, the interexchange carrier can establish its own billing arrangements with those customers either by providing the customer/caller with an account number

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1/ CNS and many other operator services providers now accept commercial credit cards (e.g., VISA, MasterCard or American Express). However, calls charged to commercial credit cards are a negligible portion of all operator-assisted calls. Most callers strongly prefer to charge operator-assisted long distance telephone calls from remote locations to their telephone calling cards or to another telephone number.

or by issuance of a calling card. Many operator-assisted calls, however, are placed not by customers of the interexchange carrier but rather by transient guests at locations served by operator services companies. In such circumstances, the premises owner, not the caller, is the interexchange carrier's customer. For example, CNS provides operator-assisted services to many pay telephones and hotels and motels. Guests at those hotels and patrons of pay phones served by CNS have no direct relationship with CNS. CNS has no way of knowing the identity of callers at those locations. Thus, CNS is unable to bill calls directly to such calling parties. It is dependent upon the issuer of the calling card used to charge the call or the telephone number to which the call is to be charged for billing and collection of such calls.

As a result of their respective antitrust consent decrees, both the divested BOCs 2/ and the GTE Telephone Operating Companies 3/ are required to make available billing and collection services to all interexchange carriers if they provide those services to any carrier. Since they provide those services to AT&T, they also must make billing and collection available to all other interexchange carriers, including CNS. While the BOCs and GTE Companies do make available billing and collection, their charges for these services are unregulated and the terms and

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2/ U.S. v. Western Electric Co., et al., 552 F. Supp. 131 (D.D.C. 1982) aff'd sub nom 460 U.S. 1001 (1983).

3/ U.S. v. GTE Corporation, 603 F. Supp. 730 (D.D.C. 1984).

rates "offered" in their standard billing and collection contracts are non-negotiable.

There are, however, approximately 1400 non-BOC, non-GTE "independent" LECs which have no consent decree obligations to make available billing and collection services to interexchange carriers although every one of those companies provides those services to AT&T. Those companies are not required to make available to interexchange carriers billing and collection services and many do not offer such services to any carriers except AT&T.

Operator services providers, including CNS, are unable to receive compensation for calls charged to calling cards containing numbers issued by those LECs or to telephone numbers serviced by those LECs. Thus, CNS can not complete such calls. Similarly, CNS cannot complete calls and receive compensation for calls charged to telephone numbers in situations where the charged telephone number is assigned by an independent LEC which does not provide billing and collection services to it.

Several examples illustrate these situations.

If a guest at a hotel in Dallas, Texas where CNS provides operator-assisted calling services wishes to place a long distance call to Washington, D.C. and charge the call to his calling card, the caller would dial 0+, the area code and telephone number to be called. A CNS operator would identify himself as such and ask the caller his calling card number.

If the calling card number were issued by a LEC which provides billing and collection, (e.g., Southwestern Bell or C&P Telephone) the call would be completed and would appear as a charge on the caller's monthly telephone bill rendered by the LEC. If the calling card number were issued by an independent LEC which does not offer billing and collection services to CNS, CNS would not be able to have the call billed and collected and would not be able to complete the call unless the caller was willing to use a commercial credit card. Most callers do not use commercial credit cards to charge telephone calls. They have never had to do so to utilize AT&T's or any LEC's operator-assisted calling services.

Suppose a caller at the same hotel in Dallas wanted to place a collect call to his home or office in Washington, D.C. The caller would dial 0+, the area code and telephone number and would be connected with a CNS operator. The operator would honor the caller's request since CNS receives billing and collection service from C&P Telephone - the LEC which serves Washington, D.C. Suppose, however, that the caller wanted to charge the call to a business office near Dulles Airport outside Washington. The Dulles area receives local exchange telephone service from Contel Telephone Company of Virginia -- an independent LEC which does not provide billing and collection service to CNS or to other non-AT&T interexchange carriers. The CNS operator would not be able to complete that call and have it charged to the local telephone number since Contel would not bill and collect the

charges on behalf of CNS for the call (although it would do so for AT&T). Rather than complete a call which cannot be billed, the CNS operator would send the call back to the originating location and redirect the call to AT&T since AT&T, unlike CNS, receives billing and collection from Contel. If the CNS operator were to send the call to AT&T for completion at Austin, Texas -- where the CNS operator center is located, that would be "call splashing" since the transfer occurred in a different city from the call originator. Call splashing was a concern to the FCC in its TRAC decision and would be a prohibited practice under the regulations required by S. 1660. Let me state unequivocally that even in today's environment, CNS does not splash calls as that term is defined by S. 1643 or by the FCC. 4/ Whenever CNS redirects a call to AT&T, either because it cannot complete the call or because the caller has requested AT&T, the transfer occurs at the originating location.

Currently, CNS redirects in this manner approximately twenty-seven percent of all calls sent to it. Most of these calls are redirected not because the caller has requested another carrier. Rather they are redirected because CNS cannot have the call billed and collected or is unable to validate the calling card or billed telephone number. The necessity to transfer to another carrier approximately twenty-seven percent of the calls

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4/ S. 1643 defines "call splashing" as: the transfer of a call from one operator service provider to another at a point which is different from the point at which the call originates.

which reach its operator center deprives CNS of approximately $462,000 per month in lost revenues. In addition, the cost to CNS of redirecting calls (including access charges and transmission costs, validation inquiry charges, operator call handling, etc.) is approximately $3.00 per call attempt. These amounts represent a substantial proportion of our revenues.

Although most independent LECs do not make available billing and collection to CNS or to other non-AT&T interexchange carriers offering operator-assisted calling, the FCC has stated that it "expects" those LECs to make available billing name and address information (sometimes referred to as "BNA Information"). 5/ However, even if BNA information (the customer's name and billing address) were to become available to CNS, that availability would not reduce the need for LEC billing and collection services in order to be compensated for its completion of operator-assisted interexchange calls. When a LEC provides the BNA information, the interexchange carrier still must match the BNA information with its own call records and render a bill. The cost to the interexchange carrier of purchasing the BNA information from the LEC (the charges for which are not regulated) plus the costs of rendering a bill (labor, bill preparation, postage, etc.), greatly exceed the aggregate per call billing and collection charges paid to the LECs by AT&T. The cost disparity between purchasing BNA and rendering bills to callers on the one hand

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5/ Detariffing of Billing and Collection Services (Reconsideration), 1 FCC Rcd 445, 446 (1986).

and purchasing billing and collection services from the LEC on the other hand places interexchange carriers like CNS at a substantial competitive disadvantage vis-a-vis AT&T. Moreover, this significant expense -- not borne by AT&T -- necessitates that carriers like CNS either charge rates higher than AT&T or that they offer their services at rates below their costs in order to remain competitive with the dominant carrier.

It is important to realize that CNS and other interexchange carriers, like AT&T, are dependent upon the LECs for billing and collection because these services are by their nature monopoly services. The monopoly nature of billing and collection has been expressly recognized by the Communications Workers of America. According to the CWA, billing and collection is by its nature a monopoly service since the LEC is "uniquely in possession of the basic pieces which include the list of customers, their addresses and their usage of LEC facilities." 6/

More recently, state regulators which have considered LEC billing and collection have, like the CWA, concluded that it is part of the LECs' bottleneck local monopoly. For example, last year the New York Public Service Commission stated as follows:

> The local exchange companies have a particularly effective and broad reaching billing and collection capability, which has been developed and funded by ratepayers. The service now has monopoly attributes such as the bill recording function and the

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6/ The CWA expressed this view in comments filed in the FCC's billing and collection docket (Docket 85-88). See, Billing and Collection Services, 102 FCC 2d 1150, 1156 n. 17 (1986).

continually updated customer identification data base, which are significant bottlenecks. 7/

I recognize that the Subcommittee is concerned about complaints regarding the practice of some operator services providers of charging rates higher than AT&T. It is important to bear in mind that those companies' rates -- like AT&T's rates -- are driven by costs and the refusal of many LECs to make available billing and collection services increases those companies' costs relative to AT&T's. Elimination of these discriminatory practices which are abuses of the LECs' monopoly power will help reduce the cost disparity between AT&T and other operator services providers like CNS and will promote the elimination of the price disparities which have generated consumer complaints.

CALL VALIDATION - THE NEED

Closely related to the need for billing and collection is the need for operator services providers to be able to access the data bases necessary to validate calling card numbers and billed telephone numbers. Unless an operator services provider can determine whether a caller's calling card number or the telephone number to which a call is to be charged is "good," i.e., capable

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7/ Case 29469 - Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, issued by the New York Public Service Commission May 16, 1989, slip opinion at 34-35.

of being billed, the carrier either must assume the risk of non-payment or refuse to complete the call.

As with billing and collection, the BOCs and GTE Telephone Companies are required to and do allow interexchange carriers to access their data bases for validation purposes. The independent LECs are not so required and most do not allow such access.

An important aspect of LEC validation data is "Toll Billing Exception" information, also called "Billed Number Screening." Included in this data base are telephone numbers of pay telephones and other telephones to which a long distance call cannot be charged. 8/ When a caller attempts to charge a call to a telephone number of a pay phone, billed number screening will indicate to the interexchange carrier that the billed number is a pay telephone. The carrier will know not to complete the call since calls cannot be billed to pay telephones. The ability to access these data is essential to prevent fraud. Yet many independent LECs continue to allow access to those essential data bases only to AT&T.

LEC billing and collection services are needed by those interexchange carriers offering operator-assisted calling services to ensure that calls completed by those interexchange carriers will be billed and the revenues collected. Access to

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8/ Some residential and business telephone customers refuse to accept collect or third party billed calls. Those telephone numbers are identified in the LEC-generated data bases and an interexchange carrier having access to those data bases would know that it could not be compensated for a call charged to such a restricted telephone number.

LEC validation data is needed by those interexchange carriers to enable them to determine whether a calling card or billed telephone number represents a valid, active account that can be billed. Without access to these essential data bases, operator services providers either must bear the risk of not being able to receive compensation for completed calls, or they must decline to complete those calls. Their inability to complete calls without undertaking this unacceptable risk of non-collection therefore contributes to call redirection and, in some cases, "call splashing" which is a matter of concern to the Subcommittee.

REQUEST FOR FCC ACTION

On June 1, 1989, CNS and the Competitive Telecommunications Association (COMPTEL), the principal trade association of interexchange telecommunications service providers, including many who offer operator-assisted calling services, filed with the FCC a petition to mandate availability of essential billing and collection services and access to call validation data on a just and reasonable basis or in the alternative petition for rulemaking. A copy of that petition as well as our reply comments are attached to my written testimony as Exhibits 2 and 3. It sets forth in detail the reasons why operator services providers are dependent on these essential services as well as the legal and policy reasons why the FCC should promptly grant the requested relief. On June 22, 1989, the FCC solicited public comment on the petition. The pleading cycle ended with the

filing of reply comments on August 7, 1989. Unfortunately, to date, the FCC has not yet acted on the petition.

This petition was supported by broad segments of the telecommunications industry including the largest non-AT&T interexchange carriers (MCI and US Sprint), many smaller, regionally-based interexchange carriers, a trade association of operator services providers and pay telephone companies. Even VISA and Mastercard supported the petition. The only commenters opposing the CNS/COMPTEL request were the commenting local exchange carriers. Significantly, not one LEC opposing the petition disputed the need of operator services providers for billing and collection and access to call validation data nor did any of the LECs opposing the petition demonstrate that they could not make such services available to interexchange carriers other than AT&T. Indeed the "best evidence" of LECs' ability to make available billing and collection and access to their validation data bases to non-AT&T interexchange carriers is that the BOCs and GTE Telephone Companies already are doing so.

I would like to direct the Subcommittee's attention to several of the stated objections to the relief we have requested and explain why they are not valid reasons to deny the requested relief.

Objection 1: The FCC Already Has "Deregulated" Billing and Collection

Several LECs opposed FCC intervention in the billing and collection area by arguing that the FCC already has "deregulated"

LEC billing and collection. This is not so. In 1986, the FCC issued a decision in Docket No. 85-88 in which it required the LECs to detariff (i.e., to offer on a contract basis rather than a tariff basis) billing and collection services. 9/ The FCC specifically retained authority over billing and collection under Title I of the Communications Act on the basis that it is ancillary to the provision of telecommunications service. Thus, contrary to the assertions of those LECs, the FCC retains broad authority to require provision of those services to all interexchange carriers on a nondiscriminatory basis.

Further, as we noted in the petition, circumstances have changed significantly since the FCC conducted Docket 85-88. At that time, only direct-dialed long distance services were being offered on a competitive basis. Operator-assisted long distance calling was at that time offered exclusively by AT&T -- which received and continues to receive billing and collection services from every LEC. As I explained above, providers of operator-assisted calling services are dependent on LECs for billing and collection. The FCC is required as part of its public interest mandate to monitor its regulatory policies and consider adjustments in light of actual experience and changed circumstances. The development of competitively-provided operator-assisted services since the time of Docket 85-88 is such a changed circumstance.

9/ Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986).

Objection 2: Operator Services Providers Are Not Entitled to Validate AT&T Calling Cards

Some independent LECs have claimed that they do not issue their own calling cards, that their customers requesting calling cards receive AT&T calling cards and that the data used to validate calls charged to those cards belongs to AT&T. Similarly, even in BOC or GTE territories, calling cards issued with AT&T's name and logo are claimed to be proprietary to AT&T. Thus, even the BOCs and GTE Companies do not allow us to validate cards issued in AT&T's name. To argue that the card validation data belongs to AT&T in these circumstances is misleading.

It is true that some independent LECs do not issue their own calling cards with their own name and logo on them. Their calling card customers receive so-called "AT&T Calling Cards." What is significant however, is not the name of the company and the logo which appears on a plastic card. Rather, what is significant is the card number and how that number is issued. AT&T-issued calling cards, like LEC-issued calling cards, contain a 14-digit number which includes the area code, the card holder's telephone number and a four digit personal identification number. That card number is generated by the LEC as part of its local exchange operations. 10/ It is not generated by AT&T. Recently, the FCC rejected the argument that LEC-generated calling card

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10/ Sometimes a 10 digit number corresponding to a Regional Accounting Office rather than a customer telephone number is used. However, those numbers also are generated by the LEC.

information belongs to AT&T. Instead the FCC held that "the issuance and validation of the credit cards that AT&T uses encompasses some activities that are a byproduct of local exchange operations" (including the generation of calling cards that incorporate the customer's telephone number). Based upon this finding, the FCC concluded that those services are Title II services under the Communications Act and therefore subject to FCC regulation. 11/ As Title II services, the FCC stated that they must be offered to any carrier that can utilize such services in a manner which does not create unreasonable discrimination in the provision of like services.

The FCC's recent decision in Cincinnati Bell rejects the argument of some LECs that they have no obligation to allow access to validation data bases if they do not issue their own calling cards. However, the FCC has not yet directed independent LECs to make available access to interexchange carriers their calling card number data bases to all interexchange carriers.

Objection 3: The Policies Underlying the AT&T and GTE Consent Decrees Are Not Applicable to All LECs

Several independent LECs have objected to providing billing and collection services and access to validation data bases since they, unlike the BOCs and GTE Telephone Companies, are not subject to antitrust consent decrees. Those companies overlook the fact that the public interest goals of those decrees are

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11/ Cincinnati Bell Telephone Company (Docket 89-323), FCC 90-30, released January 25, 1990, at paragraph 33.

applicable to all LECs -- not only to the BOCs and GTE Telephone Companies. Those decrees were fashioned to reduce the ability of local exchange telephone companies to use their monopoly control of essential bottleneck facilities to favor or disfavor interexchange competitors and thereby impede interexchange telephone service competition. Those policies apply to all bottleneck local exchange facilities, not only to those operated by the divested BOCs and the GTE companies. We do not believe that any LEC should be allowed to discriminate in its offering of essential billing and collection services or access to call validation data irrespective of its former ownership and irrespective of whether it is subject to an antitrust consent decree.

CALL BLOCKING

Before concluding my testimony, I would like to address one other matter -- the question of call blocking. S. 1660 would direct the FCC to promulgate regulations designed to prevent the blocking of any consumer's access to the interstate common carrier of its choice. CNS does not engage in blocking nor does it allow its customers to block. CNS' contracts with its customers provide that those customers may not block access to any carriers. Where a customer believes that blocking is necessary to prevent fraud, CNS requires it to obtain a waiver from the FCC.

In some circumstances, blocking of access to carriers by means of 10XXX access codes is necessary to prevent fraud. When a caller reaches an interexchange carrier's network by dialing 10XXX, the originating telephone equipment -- whether a pay telephone or a hotel PBX -- often is not able to differentiate between 10XXX-0 calls and 10XXX-1 calls. In the former case, the caller reaches the interexchange carrier's operator who asks the caller for charging instructions (calling card, collect, third party-billed, etc.). In the latter case, the caller simply dials the called telephone number. The call is completed as a direct dialed call and appears as a charge on the premises owner's telephone bill -- long after the transient caller has departed. In such circumstances, blocking of 10XXX access to other carriers is necessary to prevent callers from defrauding the premises owner in that manner.

There are, however, access arrangements available which can be used by callers to reach interexchange carriers of their choice from pay telephones, as well as from hotels and motels, without subjecting the premises owners to fraud. Specifically, I am referring to "950" access and "1-800" access. Under these arrangements, callers can access interexchange carriers by dialing a seven digit telephone number that begins with the 950 prefix or by dialing a 1-800 telephone number.

Most interexchange carriers make available to their customers either 950 or 1-800 numbers (or both) for accessing

their networks. For example, a caller at a telephone served by CNS can reach US Sprint by dialing 1-800-8000 or MCI by dialing 950-1022 or 1-800-950-1022. Premises owners bear no risk of fraud so they have no reason to block those numbers.

Unfortunately, one major interexchange carrier refuses to provide its customers either with 950 or 1-800 access. That carrier is AT&T. By refusing to make available 950 or 1-800 access to those who desire to use its services, AT&T is depriving its customers of access to AT&T's network. It is important to understand that the inability of callers to reach AT&T from certain locations is not the result of practices of any other operator services providers nor is it the result of unreasonable or restrictive conduct by any pay telephone or premises owner. It is strictly a business decision by AT&T.

CONCLUSION

S. 1660 would direct the FCC pursuant to Title II of the Communications Act to establish regulations to protect consumers from unfair and deceptive practices and to ensure that consumers have the opportunity to make informed choices. The goals and purposes of that bill and the regulations proposed therein are fully consistent with CNS' business philosophy and practices. Thus, we do not oppose passage of that Bill. However, we believe that the consumer protection and pro-competitive pro-choice goals of the legislation would be advanced by the FCC's adoption of regulations designed to eliminate the discriminatory manner in

which local exchange carriers make available to operator services providers the LEC-provided services essential to providing operator-assisted calls services. Today, the operator-assisted services market is not a level playing field. Many LECs continue to confer significant operating and economic advantages on AT&T as a result of their predivestiture relationships. These disadvantages placed upon other carriers such as CNS impose costs that necessarily mean that their rates are higher than they otherwise would be. We hope that the FCC will take appropriate action to level the playing field by requiring LECs to make available to all interexchange carriers billing and collection services and access to call validation data. Such availability would lead to lower operator-assisted service prices, increased competition, new services and features and increased consumer choice. In addition, the ability of consumers to reach the interexchange carrier of their choice from presubscribed pay telephones or other telephones at a traffic aggregator's premises is limited by those interexchange carriers, particularly AT&T, which refuse to make available to their customers 950 and 1-800 access codes.

Thank you for affording me the opportunity to testify before the Subcommittee.

Senator INOUYE. Thank you, sir. Mr. Oates.

STATEMENT OF WILLIAM G. OATES, MANAGER, HOTEL SYSTEMS & TELECOMMUNICATIONS, THE SHERATON CORPORATION

Mr. OATES. Mr. Chairman, my name is William Oates. I am Manager of Hotel Systems and Hotel Communications for ITT Sheraton Corporation. In addition, I chair the Information and Technology Committee of the American Hotel & Motel Association and also chair that committee's Telecommunications Subcommittee. I am pleased to be here this afternoon on behalf of the American Hotel & Motel Association to present this testimony.

The issues being addressed here today are very important to the lodging industry. Our ability to offer high-quality, cost-effective telecommunications services has become one of the factors by which customers choose the hotels they stay in. Because of the highly competitive nature of the hotel industry, that demands that we recognize this trend.

Prior testimony in our written statement that we have already submitted addresses the important consumer concerns raised by the operative services issue. We would like to state that we fully embrace the legislative goal of improving consumer disclosure regarding operator services.

However, we do have serious concerns over the provisions in these bills involving aggregator call blocking. Aggregator call blocking did not significantly contribute to the consumer complaints involving operator services, nor do we believe that deliberate call blocking is, or was, actively practiced by hotels in the United States.

By deliberate call blocking, we mean actively denying a consumer access to a long-distance carrier where it is within the technological capability of that equipment to provide such access. Such an activity is not consistent with our industry's commitment to serve our guests. We have long supported guest access to alternative long-distance carriers via 950 and 800 access numbers.

These bills go far beyond the elimination of deliberate call blocking. We strongly and adamantly oppose the requirements found in Sections 4(a) and 5(b) of these bills. The only reasonable interpretation of that section is that hotels must be able to provide access to the carrier chosen by a consumer, without exception.

As stated above, we believe that hotels currently provide access choices to their guests in an effective manner via 950 and 800 numbers. However, access by equal access codes would be required per the language quoted above. Virtually every hotel telephone system will require significant modifications and enhancements to provide 10XXX access.

Older PBX systems designed before the concept of equal access codes are not capable of providing this access. These systems would have to be replaced. Even most contemporary systems are unable to provide the level of digit screening required to give access to 10XXX 0+ calls and restrict 10XXX 1+ and 011 calls, thus protecting hotels from misuse and fraud. The idea of upgrading hotel telephone systems to provide this access would be a financial and operational nightmare.

Information received from key AH&MA members indicate that virtually all of their properties would be impacted financially. According to our members, total industry impact can reasonably be estimated to exceed $600 million. This figure merely addresses the estimated average cost for a property to upgrade their telephone system.

This does not begin to consider the fact that fully half of our industry, upwards of 20,000 hotels, have equipment that cannot be updated to provide 10XXX access with any current technology. System replacement costs, even for small properties, can run well over $100,000.

If you mandate full equal access without recognizing the technological difficulty, you could impose an additional burden on our industry of up to $1.7 billion, a potential total impact of $2.3 billion. This figure does not even take into consideration the potential exposure to fraud that exists, should the implementation of such requirements be mandated before the technology is available to solve the fraud and the misuse problem.

Please note that all these changes in hotel telecommunications equipment are required to accommodate access to AT&T. With the exception of AT&T, all long-distance carriers and operator service providers allow access to their network by an 800 or a 950 access method, methods we gladly support today.

In summary, the hotel industry strongly believes that requiring hotels to provide 10XXX access is unnecessary. Based on current access availability, on the state of current hotel technology, and the extraordinary cost to provide such a service, such a requirement does not offer any advantage to our guests.

A more realistic solution to network access from hotels would be a requirement that all carriers offer alternative methods of network access. This means AT&T. It simply makes sense to have one large telephone company add an access method than to have 40,000 hotels upgrade their telecommunications equipment.

We acknowledge, and it was mentioned in previous testimony, that there are some other answers offered to this Committee as inexpensive solutions to the hotel industry's equipment problem. Our written testimony addresses such alternatives in detail. But in short, none of these answers can be recognized as a truly viable solution to unblocked 10XXX calls, or preventing fraud and abuse.

From a personal perspective, I was a little surprised to listen to AT&T and have them infer that alternative solutions have been found already. My company, the ITT Sheraton Corporation, is an AT&T user. We do not use alternative operator services in our hotels.

We have been in discussions and fully support all AT&T's efforts to come up with alternative solutions, but clearly at this point those solutions are conceptual in nature, and nothing has been proven of a technical nature, and nothing has been proven in the hotel environment to actually work and to correct these fraud and abuse problems.

We also are aware that these bills include a waiver provision with respect to certain classes or categories of equipment. Since it is apparent that 100 percent of hotel telecommunications equip-

ment will require a waiver, in our opinion, we believe that the burden on the hotel industry and on the FCC would be significant.

This process would likely involve a significant amount of time and expense to our industry, due to the unfamiliarity with the FCC process. In light of the fact that a simple change in the legislation by your Committee could correct this unintended result, we believe that the waiver requirement is unsatisfactory.

We should also note that even if waivers were provided to hotels because their systems were incapable of being upgraded, that that waiver would provide no solution to the consumer. They would still not be able to get to AT&T.

We believe that AT&T, like all other long-distance and operator service providers should provide alternative access to their network at this time. We will continue to support guest choice by allowing guest access to all carriers via such alternative access codes within our technological capabilities.

We need to support this choice to survive in the hotel business, and as technology advances, we will advance with it, but as of today, technology has not rendered our equipment obsolete, and we should not be required to upgrade 100 percent of this equipment because of AT&T's stance on network access. We call on Congress to prevent this from happening.

Thank you for your attention. I will be glad to answer any questions you might have.

[The statement and questions and answers follow:]

STATEMENT

of the

AMERICAN HOTEL & MOTEL ASSOCIATION

Good morning, Mr. Chairman, my name is William G. Oates. I am the Manager, Hotel Systems & Telecommunications for the Sheraton Corporation. In addition, I chair the Information and Technology Committee for the American Hotel & Motel Associations and am also the chairman of that committee's Telecommunications Subcommittee. I am pleased to be here this morning on behalf of the American Hotel & Motel Association to present testimony on the subject of operator service providers to this subcommittee.

The American Hotel & Motel Association is a federation of affiliated lodging industry associations located throughout the United States, Puerto Rico, and the Virgin Islands. The association represents almost 9,000 member properties comprising more than 1.4 million rooms. Our membership includes all the major hotel chains as well as many independent properties of all sizes.

INTRODUCTION

The issues being addressed today are important to the lodging industry. Although telecommunications is clearly not the primary focus of our business, it represents an important component of the service we provide our guests. Our industry is tightly linked to the rapidly evolving telecommunications marketplace, and, as part of the user community, we appreciate the opportunity to be heard on legislation directed at telephone service providers which could have a significant impact on our industry's operations.

It is important to note that providing telephone service to our guests has been an important aspect of hotel operations for years. The introduction of new telecommunications services and technology has brought us far beyond the point of satisfying our guest requirements by merely offering direct dial telephones in our rooms. Our ability to offer high quality, cost effective telecommunications services has become one of the factors considered by customers when choosing a hotel. The highly competitive nature of the hotel industry in the United States demands that we recognize this trend.

The hotel industry will acknowledge that certain of the provisions in these bills address valid consumer concerns.

However, we believe that other provisions in the legislation before you today would impose burdens on the lodging industry reaching far beyond what is actually required to address the issue of competitive operator service providers in the marketplace. Certain components of the legislation are unnecessary and, if imposed, would create significant operational and financial hardship on the lodging industry.

I. CONSUMER CONCERNS

The bills before you stem mainly from the introduction of competitive operator service providers in the marketplace and complaints from consumers about this new service. Those complaints focused on the fact that calls were handled by competitive OSP's, and billed at OSP rates without the knowledge of the consumer. In fact, many consumers were not even aware of the operator service provider's existence until a charge was rendered as part of their monthly telephone bill.

As consumers of telecommunications, we also had much to learn about competitive operator services. Hoteliers had been led to believe that the service would be transparent to their guests, and that the commission offered to properties was merely a return to the days before 1983, when AT&T compensated hotels with a 15% commission arrangement.

In many instances, hoteliers were as surprised as other consumers about the various problems which arose, but our industry did not remain static when we learned of consumer dissatisfaction. The uproar over OSP practices led many hotels to rethink the use of AOS services. Also, in 1988, AT&T initiated a new program of providing commission payments to hotels in return for directing their operation service traffic to AT&T. At the same time operator service providers made adjustments to react to consumer dissatisfaction.

While perhaps unnecessary, considering the many market adjustments to these problems, we believe that the disclosure requirements in these bills will eliminate any remaining consumer concern regarding operator services. The branding of calls by operator service providers in and of itself eliminated the major consumer complaint.

The hotel industry supports improved consumer information in the vicinity of the presubscribed telephone, but cautions that this issue is being rapidly addressed by state regulators and legislatures. State and federal authorities should coordinate requirements regarding consumer notification to avoid duplicative or conflicting requirements. In addition, the burden of providing and updating the notifications should rest with the operator service provider and not on aggregators such as a hotel. With the above provisos, we have no objections to the section of these bills addressing consumer concerns.

II. CALL BLOCKING

However, we do have serious concerns over the provisions in these bills involving aggregator call blocking. Aggregator call blocking did not significantly contribute to the consumer complaints involving operator services, nor do we believe that deliberate call blocking is or was actively practiced by hotels in the United States. By deliberate call blocking, we mean actively denying a consumer access to a long distance carrier where it is within the technological capability of that telecommunications equipment to provide such access.

Hotels have long supported guest access to alternate long distance carriers via "950-10XX" and "800" number access. The concerns raised by consumers regarding deliberate blocking were directed at the operator service providers, because once a caller had reached an OSP operator, they were not able to be conveniently transferred to a different carrier. With perhaps rare exceptions, hotels played no part in purposefully blocking guests from a choice of carriers through CPE PBX equipment programming. And I want to be clear about this, we do not support deliberate blocking of consumer calls by an aggregator or an operator service provider. Such an activity is not consistent with our industry's commitment to our guests.

Unfortunately, these bills go far beyond merely proscribing deliberate call blocking. We strongly and adamantly oppose the requirement found in Section 4(a)5(B) of the bills before you requiring that "existing equipment used by aggregators be upgraded to comply with the requirements imposed pursuant to sub paragraph (A)" which in turn states, "that equipment will be technologically capable of providing consumers with access to interstate interchange carriers through the use of access codes approved by the commission."

The only reasonable interpretation of that section is that hotels must be able to provide access to the carrier chosen by a consumer, without exception. As stated above, we believe that hotels provide access choices to their guests in an effective manner via "950-10XX" and "800" numbers. However, equal access, or 10XXX, codes would seemingly be included in the language quoted above. Virtually every hotel telephone system will require significant modifications and enhancements to provide 10XXX access. Older PBX systems, designed before the concept of equal access codes, are not capable of providing 10XXX access. These systems would have to be replaced to comply with the above quoted language. Even most contemporary systems are unable to provide the level of digit screening required to give access to 10XXX 0+ calls and restrict 10XXX - 011 and 10XXX 1+ calls and protect hotels from misuse and fraud. The idea of upgrading hotel telephone systems to provided 10XXX access would be a financial and operational nightmare.

The investment of administrative resource and capital required to satisfy this legislative requirement that 10XXX access be allowed would be tremendous. Information received from key AH&MA members indicate that virtually all of their properties would be impacted financially. Total industry impact can reasonably be estimated to exceed $600,000,000. This figure merely addresses the estimated average cost for a property to upgrade their telephone system.

This does not begin to consider that fully half of our industry, upwards of 20,000 hotels, have equipment that cannot be updated to provide 10XXX access with any current technology. Systems replacement costs, even for small properties, can run well over $100,000. If you mandate full equal access without recognizing the technological difficulty, you could impose an additional burden on our industry of up to $1.7 billion. A potential total of over $2.3 billion for our industry. This figure does not take into consideration the potential exposure to fraud that exists should the implementation of such requirements be mandated before technology is available to solve the fraud and misuse problem.

The reason our industry would be exposed to this potential dollar expenditure can be easily explained. Currently, access to long distance carriers is possible through 800 access, 950-10XX access and 10XXX access. All long distance carriers and operator service providers, save one, allow access to their

service by 800 number or 950 number - the one that doesn't - AT&T. Access to AT&T's long distance service is only possible through 10XXX access. They do not provide access to their long distance service by means of an "800" number or a "950" number. Therefore, all the changes in hotel telecommunications equipment discussed above would be required to accommodate AT&T.

If this legislation is enacted, the seeming result is that for a hotel which avails itself of a long distance operator service provider other than AT&T, it will be in violation of these bills. Although this hotel provides "800" and "950" carrier access, it will be mandated to upgrade equipment to provide 10XXX access just for AT&T.

By comparison, if a hotel has AT&T as its long distance carrier, it will be in compliance with the equal access provision because the other long distance carriers can still be accessed by hotel guests. This would create a situation where hotels may choose to switch from the other long distance carriers to AT&T, hoping to avoid the expense of upgrading to provide 10XXX access. This potentially anti-competitive situation, with its dire financial consequences for the lodging industry, should not be acceptable to this committee. And we fear it will not be acceptable to AT&T competitors, some of whom also offer 10XXX access and who may still attempt to force the hotel industry to upgrade its equipment.

In summary, the hotel industry strongly believes that requiring hotels to provide 10XXX access is unnecessary, based on the availability of "950" and "800" access, on the state of current hotel equipment and current technology, and the extraordinary cost to provide such service. Such a requirement does not offer any advantage to our guests not currently provided by access via 950-10XX and "800" numbers. A more realistic solution to network access from hotels would be a requirement that all carriers offer all methods of alternative access. This means that AT&T add 1-800 service.

All information received from AH&MA members expressed support for the approach of having AT&T provide "800" access. Clearly, the major providers of telecommunications services in this country are in a better position, in terms of efficiency, technology and financial resources, to address this consumer issue. It simply makes sense to have one long distance carrier add a service than to have 40,000 hotels upgrade their telecommunications equipment.

Other answers are likely to be offered to this committee as solutions to the hotel industry's equipment problem. We have reviewed alternate methods of providing the 10XXX access to our guests with existing technology. Although this review has not been as in-depth as may be required, we believe that the installation of adjunct "toll restrictors" should not be considered at this time as a solution which will allow you to mandate full equal access. The installation of toll restrictors on our PBX lines will require significant

administration resources and capital expense. We also have doubts that these devices will accomplish the required task without exposing properties to misuse and fraud. Our experience with "toll restrictor" type devices in the past has not been satisfactory.

Another possibility - an LEC offering that would provide the appropriate screening is also of questionable value. Such service is not available to us today. In fact, we have serious problems regarding IXC and LEC ability to understand current hotel line requirements such as HOBIC service. Even today, individual hotels can not get the required information and proper implementation of basic hospitality service lines. For example, one member expresses concern based on the fact that current AT&T TSPS screening fails to provide protection to 4 or 5 of their hotels weekly.

We ask you to understand that most individual hotel properties must rely on the technology expertise of the suppliers that provide such service. The complex post divestiture environment limits a hotel's ability to get total information from their vendors. Both of these alternate solutions have a long way to go before they can be recognized as truly viable solutions to unblock 10XXX calls while preventing fraud and abuse. They do not provide an answer today.

We are aware that Section 4(a)5(B) of these bills includes a waiver provision "with respect to any class or category of equipment if the commission determines that the benefits of applying such requirements to such equipment do not justify the cost." Since is apparent that 100% of hotel telecommunications equipment will require a waiver, we believe that the burden on the hotel industry would be significant. This process would likely involve a significant amount of time and expense to our industry due to unfamiliarity with the FCC waiver process. In light of the fact that a simple change in the legislation by your committee can correct this unintended result, we believe the waiver requirement is unsatisfactory.

III. CONCLUSION

The hotel industry is being asked to bear a significant part of the financial impact imposed by the equal access provision of this legislation. As an end user of telecommunications services, we believe that our voice must be heard, just as the voices of IXC's, OSP's and LEC's have been heard. We were not present as defendants in the TRAC proceedings, and much of the blame for blocking calls was inferred to be ours. We were not formally requested to present recommendations on the potential solutions to "splashing" and blocking as the Carriers Liaison Committee of the Exchange Carrier Standards Committee (ECSA) met to resolve the issues raised in the FCC TRAC order.

We also were not part of the agreement reached on H. R. 971 when it was modified to reflect the interest of Private Pay Phone providers. See for example Section 4(b) of H.R. 971 specifically directing the Commission to "consider the need to prescribe compensation for owners of competitive public pay telephones for calls routed to carriers other than the designated provider" while not calling for the commission to address the same type of situation originating from aggregator telephones.

In summary, we come before you today to provide a perspective on these issues and, in particular, on the call blocking--equal access issue that has not been heard to date. The legislation, as written, puts much of the responsibility for resolution of the call blocking issue on the shoulders of the hotel industry.

There is no reason why AT&T, like all other long distance and operator service providers, can not provide "950-10XX" or "800" access to their network at this time. The only reality is that they will not. Since this is the case, they should bear the administrative and financial expenses resulting from that decision, and not the lodging industry. We will continue to support guest choice by allowing guest access to all carriers via alternative access codes within our technological capabilities. And as technology advances, we will advance with it. But as of today, technology has not rendered our equipment obsolete and we should not be required to upgrade 100% of our equipment because of AT&T's stance on network access. We call on Congress to prevent this from happening.

Thank you for your kind attention, I'd be glad to answer any questions you may have.

Questions of Senator Larry Pressler

Mr. Oates, has your company noticed any consumer backlash with regard to the use of AOS providers? How have you dealt with that? Do you welcome legislation in this area?

Senator Pressler, ITT Sheraton Corporation did enter into three AOS trials at Sheraton managed hotels in 1987, the "early days of AOS". In each case, our own review of the new service resulted in trial termination. Although we believe our review and subsequent termination of these trials preempted serious consumer backlash at our properties, we certainly understand the rate and disclosure issues that prompted guest complaints.

In the case of ITT Sheraton, we strongly recommended that our managed properties select AT&T operator services as the presubscribed provider to guest room telephones. At the time of our decision, we believed that AT&T offered the highest quality operator services available to our guests. It should be noted that this decision to recommend AT&T services was made despite a strong economic incentive to implement competitive operator service providers at significantly higher commission rates.

We believe that our guests have become increasingly aware of the telecommunications services offered by hotels in today's environment. It is a fact that any quality hotel operation will not select an operator service provider based solely on the commission level offered to the property. Such narrow decision criteria will ultimately detract from the primary business goal of any hotel, to satisfy our customers and fill our guest rooms. In the hotel industry, we believe that the ultimate consumer does significantly impact the service selection process.

As stated in our previous testimony, we do support the components of the legislation that will improve consumer disclosure.

However, we continue to oppose the notion that the hotel industry should bear the financial burden of solving consumer access problems created by the telecommunications environment. The vast majority of hotels currently offer full consumer access to all long distance carriers. For years, these hotels have supported guest access to alternate carriers by "950" and "800" numbers. In addition, seventy-five per cent (75%) of hotel properties are currently presubscribed to AT&T operator services, thereby foregoing the higher commission rates offered by competitive operator service providers.

This legislation requires that all hotels be required to "unblock" 10XXX access to all carriers. This will require expensive enhancements to every hotel telephone system in this country, even where a blocking problem does not exist today. We believe this to be an entirely unfair, and possibly unintended result of this legislation.

Our true incentive to provide quality telephone services to our customers is guest satisfaction.

I appreciate the opportunity to respond to your questions. Please feel free to contact me should additional information be required.

Senator INOUYE. Thank you very much, Mr. Oates.

Much has been said about fraud. What is the cost of fraud, nationally? Can anyone tell us?

Mr. ROWLAND. Senator, I cannot tell you the figure, but I can tell you it is enormous, and we have experienced quite a bit of it in our small company, and it hits very suddenly. In fact, it hit us last weekend. We had one of our cards stolen, our access code stolen.

Another competitor of ours in Dallas, the same group, it hit them the day before. They found out about it. They cut off their switch for access. They moved right to us immediately, which indicated that this was part of a network of stolen numbers.

We have in the last two weeks removed over 200 credit card numbers from our system because we found they were stolen. There is an active network going on out there, that they put them on bulletin boards, they sell them, they have an 800 dial up, I am told, to get these numbers. The particular fraud this past weekend was directed at people calling Puerto Rico and the Cayman Islands.

Senator INOUYE. They advertise fraud?

Mr. ROWLAND. They actually sell numbers. There are people that make their living locating good numbers and selling them.

Senator INOUYE. Is that not in violation of the law?

Mr. ROWLAND. It is in violation, but I do not think the laws are adequate to cover it. The Secret Service is the branch that investigates this. They are very shorthanded. They do not know much about the telephone business, I might add, and it is a very difficult problem.

Another problem with that is that when fraud is discovered, there is no effort that we have ever seen by the local exchange companies, the Bell Companies or AT&T, to ever prosecute anybody. They get hit for massive frauds and they just pass it into the rate base and so we all pay for it. We do not have that ability, and so it is very damaging to us and it is a costly item.

Senator INOUYE. What is the experience with Bell Atlantic and fraud?

Mr. COLLINS. I am not familiar with the details of the loss to fraud, but I know it is a very small number for us.

I would like to comment that we do prosecute to the fullest extent possible whenever there is a case of fraud, and we have credit cards and when those numbers are stolen we prosecute to the fullest extent.

I have a couple of other comments, if I may, Mr. Chairman.

Senator INOUYE. go ahead.

Mr. COLLINS. I understand one of the first, or the third witness—or the second witness, I guess, Mr. Hanft, may have some information that is out of date on the amount of time and the cost and delay that would be appropriate with the billed party preference system.

If we implement the system using the correct technology, and that would take the two to three years to get it started, and it may take longer to get it fully universal across the country under that system, there would be no delay imposed by that system when the caller makes a credit card call.

Senator INOUYE. How much would that system cost?

Mr. COLLINS. That system—I was just going to get to that. To deploy it, to develop and deploy the system for Bell Atlantic is about $16 million, and I would estimate $150 million Nationwide, and there would be some operating cost of about—in Bell Atlantic about $6 million a year.

If I sort that all out and turn it into a cost-per-call—not per minute, but per call—we think it is between 6 and 9 cents per call, and for that particular price—I do not know whether you have watched the TV ads recently, but you see two meters running on with two different carriers calls. It appears that if you select the right carrier you could save as much as 30 cents per call, so this 6 to 9 cents per call to assure the consumer that they get the carrier of their choice seems to me to be an appropriate level of charges.

I just want to set the record straight on the fact that there is no timing delay if we put the right technology in place. If we implemented it today, it would have to have two operators and it would take some time, and we do not recommend that. We recommend the pending legislation as an interim step.

Mr. HANFT. Senator.

Senator INOUYE. Is your organization working on this right now?

Mr. COLLINS. Senator, we have done some very preliminary work to explore the development of the technology. We are in a difficult position, between the court requiring us to spend $160 million to develop this and to deploy it nationwide, and the fact that if we did that and it was not uniform, we would have spent the money and the consumers would have to pay the $160 million but there would be no benefit from it to the public. So we are going very slow until we get a decision from the FCC.

Senator INOUYE. Do you have any comments to make on the proposal made by Mr. Hanft and Mr. Rowland that they be compensated for services extended to a carrier other than the primary carrier?

Mr. COLLINS. I am not sure I recall the type of situation it was. I know that when they buy a set and hang it on a line from our central office we bill them what is a Commission-approved charge for the transport of that call. We pay commissions to property owners, not to the pay phone agents, as I understand it, as do they, and we believe that is the appropriate commission structure.

Mr. HANFT. If I may, Mr. Chairman, there are several things. One—while, the billed party preference might only raise the cost 6 to 9 cents, and if that is what he says then I will believe him.

Let me tell you that there is technology today that my company is installing in our phones that will be able to cut the cost by 40 percent.

Let me also tell you that my company, on 3,500 phones in the State of Florida, charges 20 cents, not 25 cents, for a local call. All the other operating companies in Florida charge 25 cents, we charge 20 cents.

Let me also tell you that on a long-distance call where you pay for the call by coin rather than using an AT&T or a Bell calling card, but you pay for that call by coin, we charge 10 percent lower than either AT&T or Bell at any time of day or night, and we give the second minute of calling for free.

Let me also tell you that on our phones, if you pay for your long-distance call by using a Visa Card or a MasterCard, or an American Express card, you will pay 5 percent lower than either the AT&T or Bell rate for a similar call.

Let me also say that there are several operator services companies who charge dominant carrier rates. One operates in your home state—Long Distance USA—and I think they have a very fine reputation.

I do not think, also, that my colleague here from Bell Atlantic—I understand why he would like to keep the commission structure the same. That is because he has a monopoly on the intraLATA traffic, and we have to give him all of that traffic on his phones.

For that traffic he pays his premise owners. On my phones, not only does he not pay me, but I cannot pass anything back to my premise owner. So the man from Bell Atlantic would like to keep his monopoly position.

We find that with competition, as you have seen in the inter-exchange industry, rates have come down 40 percent in that industry. Even AT&T's rates are down 40 percent, and I do not think anybody here thinks that AT&T's rates would be down today if they did not have competition.

So it is our goal as an industry to bring superior telecommunications, superior technology, to the consumer at lower rates, not higher rates, and once we get a level playing field to compete on, you watch us.

Senator INOUYE. Now, you have 100,000 phones?

Mr. HANFT. In the association, yes.

Senator INOUYE. They are owned by you?

Mr. HANFT. They are owned by companies in the association. We have over 100 companies in the association. My company operates 7,000 instruments.

Senator INOUYE. You own all of those?

Mr. HANFT. Yes, sir.

Senator INOUYE. We often compare our system with the systems abroad—the British system or the Japanese system. Do we have anything comparable in Britain, or Germany, or France? Do they have the same kind of problem?

Mr. COLLINS. Mr. Chairman, I am not sure they have competition in the pay phone area. I would be happy to check and supply you information on that.

Senator INOUYE. What is the situation with Sheraton Hotels abroad?

Mr. OATES. Well, it is a very different environment internationally, and it varies between the different countries, but in most cases the deregulation of telecommunication services is far behind what we are doing.

We are seeing now, in some countries, the ability to go to alternative long-distance carriers, but in terms of our public telephones and those type of instruments, we have not seen this type of problem. We certainly do not have a blocking and an access problem in the European hotels.

Mr. COLLINS. Mr. Chairman, may I respond to another point that was made earlier? I believe we have evidence here that competition is working. If the gentleman on the right can provide service lower

than the local telephone company, I congratulate him on that, and I think that is what competition is really all about.

He indicated he could provide service for, maybe it is 40 percent less, or he would cut his cost 40 percent. When I commented on the 6 cent cost, that is for this particular added technology. The overall cost of access and communications charges have been going down for years, and I believe we are also realizing the benefits of technology.

On the intraLATA situation, I find that interesting in that we would very much like to be able to compete, and there is a very large activity in Washington to remove the MFJ restrictions that would allow us to compete outside of the LATA's and I think it would be appropriate to consider that as part of the overall package of whether or not there should be competition inside the LATA's. We do have some competition in several of the states inside the LATA's authorized by the state commissions.

Mr. ROWLAND. Mr. Chairman, could I address the remarks of Bell Atlantic?

On billed party preference, it is some obvious advantage to Bell Atlantic and also to all of the other RBOC's to have this billed party preference. They would create an absolute monopoly on operator services for them and they would very much like to be an intra-exchange carrier, but with billed party preference the average person has a local telephone company card.

They would immediately have most of the cards in the United States and have a monopoly on the long-distance business too, at least intrastate, and so there are obvious economic advantages to them on this system.

The average person out there does not choose a carrier, though we had the lottery system where they were given a carrier. Many people, probably if you walked up to ten people on the street, nine of them would not know who their carrier is.

Billed party preference would tell them they do have a carrier that they chose. They do not know anything about it. So it is a misnomer to say billed party preference. People that really have a preference today can reach their carrier.

We have never blocked any calls at our switch, and people that are on MCI, or Sprint, or AT&T, which are your three biggest carriers that put out calling cards, people know how to dial those numbers. It is no additional expense to other rate payers and they can access those people.

With billed party preference, all of the rate payers are going to be paying for a very few people to have a different kind of access to their carrier and to give the Bell Companies another monopoly and strengthen their stranglehold on everybody, and that is the real problem with it.

Mr. COLLINS. Mr. Chairman, this is getting to be interesting, is it not? I believe, when the consumers and businesses were polled to select their carrier, which is then identified with their line at home or business, that about 85 percent—and I might be wrong a couple of points—did select an inter-exchange carrier, and the allocation of the remaining part was done by FCC rules on some kind of a prescribed basis. So most customers do know who they have selected as their inter-exchange carriers and are aware of that.

We, by the way, offer to all inter-exchange carriers the use of our credit card for purposes of completing calls—and we will validate it for them and make sure that it is a valid card. We provide that to any of the AOS's or any inter-exchange carrier.

Mr. OATES. Just one comment.

Since this panel discussion seems to be focusing on billed party preference, and to bring it home to our concerns as the hotel industry, one of the issues that needs to be raised is that if billed party preference is going to be the wave of the future in regards to access in the United States, it clearly means a departure from the current pre-subscription access.

The hotel industry, which now is faced with the potential financial exposure that I mentioned earlier, would be doing that merely for an interim basis, because when billed party preference is implemented there is no need for 10XXX access. There is no need for 950 or 800. These calls will automatically be routed to the carrier chosen by the caller.

So that is something that we have a problem with, in that we could be required to go through this exercise of upgrading all of our equipment and find out that—1993 was the date I heard earlier—that that was all for naught. So that is a major concern for us.

Senator INOUYE. Did I hear you correctly that if these two measures passed, and are fully implemented, it would cost you in excess of $2 billion to upgrade your system?

Mr. OATES. Well, the numbers that we proposed are based upon information that we have received from the AH&MA members over the past weeks, to attempt to provide some feedback for your Committee. To upgrade our hotel telephone systems, we estimate to be about a $600 million impact.

However, we believe at this point that 50 percent of our hotel properties will not be in the position where they can just upgrade their equipment and may be required to replace their telecommunications equipment. For those hotels, even for smaller hotels, we expect the total impact of that to be an additional $1.7 billion. That is where the $2.3 billion number comes from.

Senator INOUYE. All of the instruments in your hotel rooms are owned by the hotels?

Mr. OATES. In almost all cases now the PBX's, switching equipment and the telephones are owned by the hotel.

One of the problems we have with the alternative methods that are just beginning to be discussed about—as AT&T presented, at a cost of $300 to $1,000 for an upgrade—one of the problems we have with this is that we have 40,000 hotels in this country.

And granted, some larger hotel chains, such as the Sheratons and the Marriotts, have some technical expertise, we do try within the hotel association to keep communication between these people.

However, when you get down to independent hotels—hotels are by nature a very small business, and you understand the technical details we have gone through just today on understanding what is access and adjunct dialers and local exchange company screening programs—a lot of this is going to be very difficult for the individual hotelier to be able to understand, and then properly implement in his hotel, while protecting him against fraud and misuse of his system.

Mr. COLLINS. Mr. Chairman, I think Mr. Oates has made a very important point. We are about to spend $160 million and he is about to spend $600 million, and what we need is for the FCC to make a decision on whether or not we should go ahead with billed party preference. And as I said earlier, the legislation which provides consumer protections is a reasonable alternative to that.

We believe that billed party preference better meets the consumers' needs, because it automates what customers would be able to do manually. But we need a decision from the FCC promptly so that both of us can get along without investing and wasting money.

Thank you.

Senator INOUYE. Thank you.

Ms. Easterling, you have been sitting in the middle there listening to the exchange from left to right and right to left, and I believe you can say that you are the only one representing the consumer in the real sense.

What do you think about all of this discussion? Are the consumers getting shortchanged?

Ms. EASTERLING. I really believe that they are. Because just as you indicated how you personally had been affected by it, so have I. I travel a great deal and actually the phone calls that I cited to you were my own. But it goes beyond that.

I was at a shopping mall and was trying to place a long-distance call and using the AT&T access code. And in doing so encountered a recording to deposit $1.75 just to reach the AT&T operator. And so I am sure that that was a charge that the pay phone people were getting as well.

One of the major problems is the people who are being affected. There are many from senior citizens because they are the people who travel a great deal. We hear from them.

Everybody thinks that because we represent many telephone workers that we are the ones they should bring the complaints to. And we have gone to the point now where we have form letters that we send to people out there to complain to the FCC, to the local exchange company, and to the AOS company involved.

We do not see any drop in the complaints.

Actually, recently I made a public service tape used on a radio show that they plan around universities that prompted a whole deluge of letters. And so I have really been involved in it very deeply.

I was kind of taken back, I guess, at the Sheraton gentleman's testimony, since it has been a matter of public record, having been in the newspapers that the Sheraton had AOS service and gave that up and went back to AT&T because of the number of complaints that they had received.

Mr. OATES. Let me just qualify that, since my employer was mentioned.

We did try out a couple of alternate operator service companies back in the very early days of AOS, back in early 1987. We obviously were concerned about the consumer impact.

But our change was made by us, evaluating it on our own and determining that at that point it was not a service that we felt we were comfortable with offering to our guests, and we did withdraw those systems. We did not merely respond to complaints that we

got, but actually preempted the complaints by looking at the product very carefully and by determining that that just was not in our best interest at that time to do that.

But that is absolutely right, we have decided from a corporate managed hotel perspective to stick with AT&T operator services at this time.

Senator INOUYE. The calls that this committee has received from members of the Senate and the letters we have received would suggest that this problem is one that cannot be set aside and resisted.

And therefore I think it would be safe to assume that this committee will be acting upon these two measures before us.

However, the record should indicate to anyone who reads the record that it is not a very simple problem. It is a very complex one. And therefore, I can assure you that we will not act precipitously.

I will take the initiative in keeping the record open until the first of March. And so if you wish to submit addendum or supplemental testimony, or anyone else wishes to submit statements for or against or any suggestions, they will all be gratefully received.

And may I, on behalf of the committee, thank all of you for participating in this hearing this morning and for the patience you have shown in waiting this long. I think an explanation is called for.

Most of the members on this committee also chair other committees, as Senator Bentsen has his finance committee, and Senator Exon has the subcommittee on armed services, and all the others are ranking members, and that is why I am here alone. That does not mean that they are not interested.

I can tell you by the questions that they have submitted, which I will submit to the witnesses, it would indicate the deep and concerned interest that my colleagues have in the issue before us.

And so, with that, I thank you on behalf of the committee.

The committee is adjourned.

[Whereupon, at 12:52 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (COMPTEL)

The Competitive Telecommunications Association (COMPTEL) is the principal industry association of the nation's competitive interexchange telecommunications carriers, with approximately 125 member companies. The membership includes large nationwide long distance companies as well as many regional carriers, some of which provide operator services either as a principal line of business as an adjunct to their traditional long distance service business (just as AT&T has always done).

Many of COMPTEL's members were among the first to break into the marketplace in the late 1970s when the FCC began to permit long distance service competition. They provided service as the market transitioned from monopoly to competition, and they experienced and responded to the initial confusion and frustration among consumers. Today, however, their customers are happy to have the right to choose from among competing vendors of both long distance service and telephone equipment for their homes and businesses. Consumers are reaping the benefits of new competition in these markets.

Likewise the potential for consumer benefits exists in the operator services market. Operator services providers are developing a variety of new information services not offered through AT&T operators.

For example, voice messaging services offer payphone customers who get no answer or reach a busy signal the option of leaving a message to be forwarded later to the called party. Other services such as foreign language operators have also been introduced by competitive operator service companies.

Competition generally spurs rate reductions, and we are beginning to see this in the operator services market. For example, the largest operator service providers now offer rates that are lower than AT&T's when a customer uses a commercial credit card. And, when other companies first made calling cards available, AT&T lowered its own operator surcharge in connection with calling cards. Competition in operator services and the related payment of commissions to traffic aggregators are resulting in greater availability of telephones at transient properties. This is a real convenience for anyone away from the home or office. Acceptance of bank credit cards is another consumer convenience offered by operator service companies, in contrast to AT&T's policy against it.

Yet AT&T still enjoys significant market advantages denied to its long distance and operator service competitors, such as billing and validation services from the independent LECs, and signalling interconnection with all LECs. Long distance competitors (including operator service companies) cannot provide truly effective competition until AT&T's embedded historical advantages are eliminated. And, as the January 15 AT&T network outage dramatized, long distance service alternatives are essential to this nation's businesses and to our everyday lives.

As might be expected, early confusion similar to that experienced in the long distance market has arisen with respect to the recent movement away from monopoly operator services and payphones. Many consumers are just beginning to realize that they can use access codes to reach long distance companies other than AT&T even if they haven't officially "switched". Likewise, consumers are beginning to understand that vendors compete for the business of telephone service aggregators like hotels and universities. They are learning to inquire about services and prices. The FCC has recognized some deficiencies in the availability of customer information regarding competitive operator services and has issued directives requiring rate disclosure and service company name identification. Most operator services companies have adopted such measures as standard practice of their own accord.

In the long distance business, the emergency of competitive opportunity led directly to the investment of significant financial capital in nationwide and regional digital microwave the fiber optic networks. This investment served to upgrade the quality of long distance telecommunications available to American homes and business.

Investment in the newly competitive operator services business also promises gains in technical innovation and quality. The market will naturally weed out operator service companies that lag behind or fail to serve the public. Owners of transient properties such as hotels, hospitals and universities, as well as payphone owners, will simply refuse to renew contracts where a competing vendor offers superior service or lower rates.

In the telecommunications industry, some initial confusion seems to be the standard price tag for product and service innovation. Perfect flash-cut transitions to effective competition are clearly not possible, but our experience tells us that the short term costs are outweighed by the long term benefits for customers, entrepreneurs and the economy as a whole.

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and members of the Subcommittee:

My name is Dennis Nagel, and I am Chairperson of the Iowa State Utilities Board. I appear today on behalf of the National Association of Regulatory Utility Commissioners or "NARUC", which represents the State regulators of telecommunications carriers.

The Association appreciates this opportunity to express our concerns about the growing operator services industry and the legislation introduced by Senators Breaux and Dixon (S. 1660 and S. 1643).

State regulators have been alarmed by the abuses committed by operator services providers, or OSP's, since their proliferation two years ago. A 1989 NARUC survey of the industry details thousands of customer complaints concerning practices of OSP's which were lodged with the State commissions and the FCC, including: charging excessive rates and charging for uncompleted calls; no notification of the carrier handling the call; blocking access to the carrier of choice; disconnection of local telephone service for non-payment; splashing calls to remote locations; poor quality of service; and mishandling of emergency calls. Here are a few examples of the abuses documented in my State:

An Iowa truck driver made several attempts to call a Des Moines telephone number from a pay phone in Omaha, Nebraska. The calls were never answered, but the operator services company billed him $46 for trying.

Another operator services provider billed a resident of Montezuma, Iowa, for a call from a non-existent telephone number. The same company billed another Iowa resident $21 for a call from a Des Moines hotel to the person's home. The person was never at the hotel. In both cases, the calls were billed six to eight months after the calls were allegedly made.

An Iowa resident was billed long distance rates for a local call made from a hotel and charged to a telephone credit card.

The Iowa Utilities Board alone has received over 150 consumer complaints relating to operator services problems. Customers have complained about rates sometimes triple the rates of the consumer's usual long distance carrier. They cite the inability to reach the operator services provider to protest a bill and being blocked from accessing the long distance carrier of their choice. In situations where an OSP agrees to hand a call off to the preferred carrier, the call is often "splashed" meaning the operator services provider does not inform the other long distance carrier of the caller's actual location. Thus a call from Des Moines to Omaha, a distance of 125 miles, may be billed as a call from Los Angeles to Omaha if Los Angeles is where the operator services provider delivers the call to the other carrier.

Perhaps the most dangerous problems caused by some of these new providers is their interference with emergency services. It is not unusual for telephone users to dial "O" in an emergency, anticipating that the operator will connect them to the proper emergency response authority. But if the telephone user reaches an operator other than a local telephone company operator, that operator generally cannot direct the call properly or tell the caller how to reach the proper authorities. In an emergency situation, critical minutes could be lost.

Many State lawmakers and regulators have aggressively responded to these problems. In Iowa the General Assembly gave our Board the specific authority to regulate intrastate operator services. We have adopted comprehensive rules that set maximum rates; require prompt routing of emergency calls; identification of the company before charges for a call are incurred; rate quotes; posting of the OSP's name and address on or near the telephone; and access to the customer's preferred long distance carrier. Iowa's rules are similar to the model guidelines developed by the NARUC. Other States have restricted the use of local telephone company billing

services to OSP's not meeting certain standards or simply have ruled that OSP's are not in the public interest and are not permitted to provide service.

Despite moves by the States to curb these abuses, we can affect only a small portion of operator service provided calls. State officials are very frustrated with the fact that notwithstanding their good faith efforts, the OSP problem is primarily interstate and, therefore, requires decisive action by the Federal Communications Commission to be remedied. Unfortunately, the FCC's efforts to date have been anything but decisive. Despite the many complaints against numerous operator services companies, the Commission has taken no action, and the FCC staff has addressed only one complaint lodged against five companies. In doing so, it explicitly refused to regulate the OSP's rates and ignored the routing of emergency calls, late bills, and the billing of unmade and uncompleted calls.

Those of us in this room are unusual. Most people have not kept up with all the technological and regulatory changes in the telephone industry. They expect that when they are away from home and need to place a long-distance call from a pay telephone, they are going to be charged a reasonable rate for that call. They assume that some government agency somewhere is responsible for making sure of that. Well, they are right. The FCC is responsible. The problem is it is not fulfilling its responsibility.

Last April, the NARUC petitioned the Commission to open a formal rulemaking proceeding into the practices and appropriate regulatory treatment of OSP's and urged the establishment of minimum guidelines to protect customers of OSP's. With the exception of the operator services industry, support for our petition was overwhelming. Yet seven months after all the comments were filed, the FCC continues to sit back and let this industry take advantage of unsuspecting users.

The FCC's inaction is inexcusable. The quality of telecommunications services is suffering, and the problem will intensify now that the 1.8 million pay telephones of the seven Bell phone companies and GTE are presubscribed as ordered by Federal court. Presubscription means that these pay phones will no longer have their long distance traffic automatically routed to AT&T. Customers will have no choice but to apply the doctrine of caveat emptor, or buyer beware, when they place a call from a hotel lobby or an airline terminal. Presubscription will increase the number of pay telephones connected to alternative OSPs because of the handsome commissions they offer to pay telephone owners, the current beneficiaries of OSP proliferation. Of course, these commissions drive up the rates they charge consumers.

In light of this growing problem and the FCC's complacency, the NARUC has strongly supported legislation to require the Commission to do its job. We were closely involved with the evolution of H.R. 971 as it moved its way through the House last year. Senator Breaux's S. 1660 is the product of that effort. We feel it responds directly to the concerns voiced by telephone customers, and we commend him for introducing it in the Senate.

The NARUC has not formally addressed the differences between his bill and S. 1643, introduced by Senator Dixon. The bills are almost identical, with the Dixon bill containing two additional requirements of the industry. I personally am inclined to support the provision which would require OSPs to withhold commissions from aggregators engaged in blocking and would limit rates under that circumstance to the lowest rate on file with the Commission.

I have some reservations about the second provision, however, which would prohibit the practice of call splashing. Call splashing is defined as "the transfer of a call from one operator service provider to another at a point which is different from the point at which the call originates." While I am concerned that splashing has often resulted in unfair billing for calls from locations other than that from which the call originated, I feel it is better to address this problem directly, as the Breaux bill does, by requiring that splashed calls be billed at the rate that would apply to the call if it were made directly from point to point.

By prohibiting splashing outright, Congress would strike a significant blow to developing competition in this industry. Such a prohibition could take most OSP's out of most markets, because unlike AT&T, they do not have operators stationed all across the country. I see no reason to prevent an OSP, which is otherwise in compliance with the requirements of the Breaux bill, from handling splashed calls from a remote location, if it finds it financially feasible to do so.

Another objection I have is to weakening the disclosure requirements as the Dixon bill proposes. Breaux's language requires that a written disclosure that callers may access their long distance carrier of choice be posted on or near the telephone. The language should be preserved because many consumers do not realize they have this option.

Finally, the Dixon bill limits its definition of "aggregator" to only those telephone owners who receive commissions or compensation for calls handled by an OSP. I prefer the broader Breaux bill definition which does not require that an aggregator receive any compensation to be subject to the technical standards, no blocking and disclosure requirements. I think it is important that companies providing the same operator service be subject to the same rules.

In summary, State utility regulators strongly support legislation which would force the FCC to do what the States have already done to protect the public from unscrupulous providers of operator services and permit the benefits of competition to reach the actual users of operator services.

Thank you for your attention. I would be happy to answer any questions.

STATEMENTS OF MCI COMMUNICATIONS CORP.

MCI submits the following statement to assist the Committeee in ensuring that appropriate consumer protections and full consumer access to operator services are fully available in the increasingly competitive telephone operator services market.

The introduction of competition into this section of the market has not been without some problems. However, we are confident that with proper consumer safeguards and appropriate Congressional and FCC action, competition will bring the same large benefits to consumers that we have witnessed in other portions of the long distance telecommunications market.

Some carriers instruct their customers to dial 0+ access for use of their calling cards, but do not allow all common carriers to validate their cards. This immediately and directly results in customer confusion and dissatisfaction because, absent validation of the card number, the call appears to the operator service provider to be fraudulent. With developing competition for operator services, AT&T is attempting to monopolize 0+ access by refusing to allow its competitors to validate all of its cards.

There is a simple solution to this problem which will provide for equal competitive opportunities, which MCI requests the Committee incorporate into S. 1660. As a matter of public policy, 0+ should be retained as a public form of access by requiring that any carrier that wishes to instruct its customer to use 0+ access for its card must make calling card validation data available to all carriers. This will reduce customer confusion, thus solving the industry's most significant problems.

MCI respectfully submits the following amendment to be included in S. 1660:

> Following Sec 4(a)(6)(C), add: (D) "require that any common carrier issuing telecommunications calling cards which utilize 0+ access for its card customers must make available to all common carriers all the necessary information needed to validate and bill calls utilizing such calling cards, regardless of the common carrier that the premise owner has selected."

This proposal has positive advantages. It preserves 0+ access for all card issuers and reduces the present confusion; and, it retains other forms of access for card issuers who have already invested in them, or, who may choose to do so in the future.

MCI strongly supports the policy of providing long distance customers access to their preferred carrier. Blocking of consumer access has generally occurred as a method of preventing fraudulent abuse. It became clear and was expressed repeatedly during the Subcommittee's hearing that AT&T can solve the call blocking problem by providing its customers with an additional means of reaching their network by issuing its customers either an 800 number or 950 access code, as MCI and other calling card issuers have provided their customers. Any other solutions contemplated to resolve the blocking issue will either involve financial advantage to AT&T or financial burdens to premise owners and operator service providers.

We thank you for this opportunity to submit our views and look forward to assist the Committee in any way we can.

STATEMENT OF TELESPHERE COMMUNICATIONS, INC.

Telesphere Communications, Inc. hereby respectively submits this written testimony in support of the Breaux Bill companion legislation to the Cooper Bill and in opposition to the Dixon Bill. The Dixon proposal will impose excessive costs on competitors and discourage customers from choosing competitors of AT&T.

The Cooper/Breaux Bill represents an industry consensus reached after many hours of research, negotiation and participation by many companies. It achieves a fair balance between competition and consumer protection. The bill does not give one competitor an advantage over any other. The bill is based on the principle of consumer choice. We support the bill.

Telesphere is extremely concerned about the recently introduced language in the Dixon Bill. Specifically, the Dixon Bill calls for OSPs to "withhold payment of any commission to aggregators at locations at which any blocking of access to any interstate common carrier occurs, and to limit charges for each interstate call at such locations to the lowest rate currently on file at the Commission among all other interstate carriers" (Sec. 4 (a) (4) (C); and a prohibition on call splashing (Sec. 4 (a) (6) (D).

These requirements impose an unfair and impractical burden on our Company and most other OSPs. Practically, we would immediately run the risk of unknowingly being in violation of a Federal statute since we have no control or knowledge of the aggregators blocking procedures. Technologically, Telesphere would have to set up a dual rating system that would cost this Company hundreds of thousands of dollars. Moreover, we can foresee hundreds of contractual disputes over commissions turning on the fact question of whether an aggregator has blocked or not. In addition we would be put in the position of policing hotel telecommunications systems which is both impractical and imprudent.

The prohibition on "call splashing" ignores the significant practical questions that have been explored by the Carrier Liaison Committee of the Exchange Carrier Standards Association. Elimination of splashing may cause more consumer dislocation, annoyance and inconvenience than the practice itself.

The fraud problems with blocking and the need for splashing are all created by AT&T's strategy to limit competition. AT&T has refused to adopt an 800 number for consumer access even though other major carriers have made 800 numbers available. AT&T refuses to take billing information from other carriers when a consumer asks to be transferred. These actions are calculated to preserve AT&T's

monopoly status. The new language plays right into AT&T's hand. On August 7, 1989, Mr. Robert H. Costellano, Division Manager, Federal Regulation for AT&T, wrote to Howard Wilchins of the FCC Enforcement division and related the result of AT&T's "exploration" of its feasibility of using an 800 number to enable customers to reach its operators.

As to AT&T's claim that it would be cost prohibitive to use an 800 number, Telesphere offers the following comments. First, Telesphere recommends that Congress require AT&T to provide a more detailed financial analysis to support its conclusion that the use of an 800 number is cost prohibitive. Telesphere submits that the Commission and the industry deserve more from AT&T than their statement that "the development and deployment costs of the necessary operator interface systems and facilities could reach $50 million" and "additional operational expenses of as much as a quarter of a billion dollars a year, could also occur" (emphasis added). Based on these carefully worded statements, the costs associated with the development and operation of an 800 number to AT&T could range from $0 to $300 million a year.

Second, once Congress receives more detailed cost information from AT&T, it should then compare AT&T's costs with the revenue estimate widely accepted in the industry, AT&T has retained 95% of the $8 billion operator service market, which means that AT&T's operator service revenue would be approximately $7.6 billion annually. Even assuming the worse case $300 million scenario described by AT&T, that figure represents only 2.5% of the annual revenue earned by AT&T from operator services.

Telesphere respectfully submits that Congress cannot continue to ignore the inherent competitive advantage AT&T enjoys by the fact that practically all other carriers must make an 800 number available for its customers in order to remain competitive. The introduction of competition in the operator services industry requires adoption of an 800 number by AT&T. AT&T's argument that the use of an 800 number will result in an inferior product and will substantially increase call set-up and operator work time rings hollow given the degree of AT&T's resources to resolve technical problems. AT&T apparently believes that the cost of access to its network should be borne by the hotel aggregator and, ultimately, other operator service providers who will be forced to absorb that cost (of the unblocking of 10XXX) to continue to do business with their hotel aggregators. The fact of the matter is that if AT&T desires to retain its customers, competitive principles dictate that it should pay the associated costs of access.

Congress should also take notice of AT&T's marketing practices to recapture or entrench themselves in the operator service and hotel telecommunications industry.

As Telesphere's complaint (Telesphere International Inc. v. ATT-E-88-75) filed at the FCC shows, AT&T has engaged in a campaign of illegal discrimination, rebates and violation of Commission rules in order to "win-back" hotel customers. We have seen AT&T leverage its dominant position in the past with bundling equipment and operator services to try and discourage competitive entry. The Dixon Bill supports this activity by further perpetuating the myth that all calling card problems are caused by OSPs when in fact many are caused by AT&T. It is the ultimate expression of monopoly power when a monopolist can inconvenience its customers knowing that the resulting frustration will be levied against its competition. Consumer frustration caused by AT&T causes customers to make the "right choice."

For these reasons Telesphere respectfully submits that the Cooper/Breaux Bill be adopted and that the Dixon Bill be discharged in its entirety.